United States Court of Appeals

for the Second Circuit

APPENDIX

ORIGINAL

74-2026

United States Court of Appeals

For the Second Circuit.

THE UNITED STATES OF AMERICA,

Plaintiff-Appellee,

vs.

MILTON COHEN, BERNARD DEUTSCH and STANLEY DUBOFF,

Defendants-Appellants.

On Appeal From The United States District Court for The Southern District of New York

JOINT APPENDIX
(Vol. 1 — Pages 1-886)

SEGAL AND HUNDLEY
Attorneys for Defendant-Appellant
Bernard Deutsch
745 Fifth Avenue
New York, New York
(212) PL 3-7800

ZISSU LORE HALPER & ROBSON
Attorneys for Defendant-Appellant
Stanley Duboff
450 Park Avenue
New York, N.Y. 10022
(212) 371-3900

FREDERICK H. BLOCK
Attorney for Defendant-Appellant
Milton Cohen
295 Madison Avenue
New York, N.Y. 10007
(212) 685-1161

S. EDWARD ORENSTEIN
Attorney for Defendant-Appellant
Milton Cohen
401 Broadway
New York, N.Y. 10013
(212) 925-1414

UNITED STATES COURT OF APPEALS
FILED
DEC 2 1974
DANIEL FUSARO, CLERK
SECOND CIRCUIT

Dick Bailey Printers • P.O. Box X, Staten Island, N.Y. 10302 • Tel.: (212) 447-5358

ONLY COPY AVAILABLE

PAGINATION AS IN ORIGINAL COPY

TABLE OF CONTENTS

VOLUME I	Page
Docket Entries	1
Indictment	5
Information	18
Exhibit: Letter from John M. Walker Dated 1/15/74	32
Letter from Frederick H. Block Dated 1/23/74	35
Bill of Particulars	37
Amended Bill of Particulars	41
Judgment (Milton Cohen)	43
Judgment (Bernard Deutsch)	45
Judgment (Stanley Dutoff)	46
Notice of Appeal (Cohen)	47
Notice of Appeal (Deutsch)	48
Notice of Appeal (Dutoff)	49
Excerpts from Transcript of Testimony	101
Witnesses:	
Alvin S. Malmon,	116
Georgia Nelson Quinn, for Government	180
Hugh Deane, for Government	569
Bernard Shwidock, for Government	326
Ruth D. Appleton, for Government	518
John P. Hurley, for Government	595
Michael Terry Papworth, for Government	770
Oscar Feldhamer	793

Page

Perry Leff, for Government 805

James Giasafakis, for Government 842

Gerald O'Meara, for Government 868

VOLUME II

Kenneth Rich, for Government 892

Joseph James Kally, for Government 898

John R. Filmore 961

Fred Paul Mazzeo, for Government 978

Harry B. Morginstin, for Government 1040

Somer Jack Rothman 1051

Stanley Muchnick, for Government 1141

Bernard Brodcorb, for Government 1142

Ronald Frankel, for Government 1174

Louis Chazan, for Government 1196

Dan Hesser, for Government 1202

Frank Austin, for Government 1220

James Ledbetter, for Government 1244

Gloria Jean Segal, for Defendant 1265

Dean Richard Faris, for Defendant 1270

David Feldhamer, for Defendant 1315

Allan David Dudovitz, for Defendant 1323

William L. Louder, for Defendant 1341

Harvey Pohl, for Defendant 1364

Leonard Mayer, for Defendant 1380

S. Edward Orenstein, for Defendant (outside jury's presence).1430

Page

Hugh B. Clayton, for Government 1440

VOLUME III

Government's Requests to Charge 1725

Cohen's Supplemental request to charge, No. 3 1728

Cohen's Supplemental request to charge, No. 8 1729

Cohen's Supplemental request to charge, No. 9 1730

Defendant Duboff's Requests to Charge 1731

Court's Exhibit 1-Block's Note to Court 1745

Court's Exhibit 2-Segal's Note to Court 1746

Government's Exhibits:

2 - Memorandum 1747

4 - Letter dated March 17, 1970 1749

5B - Offering Circular 1750

5C - Form Pursuant to Rule 260 of Reg. A 1766

6 - Minutes of Special Meeting 1768

7 - Letter dated November 5, 1969 1770

8 - Letters 1771

9A- Letter Dated March 17, 1969 with enclosure 1774

9B - Letter dated March 19, 1969 1777

9C - Letter from Richard Packing Co. 1779

10 - Minutes of Special Meeting 1780

13A - Annual Report 1782

13B-1 - Work papers 1793

Page

Government's Exhibits (Cont'd)

14A - Confirmation 1799A

14B - Confirmation 1799B

15A - Confirmation 1799C

16 - Confirmation 1799D

17A - Confirmation 1799E

18A - Confirmation 1799F

19A-D - Checks 1800

21-A - Z and AA-DD - Reiss & Co. Reports 1802

22-A - J - Cables 1852

24A-E - Checks With Endorsements On Back 1862

25A and B - Checks with Endorsements 1872

31a - e - News Releases 1876

31g - News Release 1881

33 - Security Recommendation 1882

37 - Memo 1883

42 - Bills 1885

47 - Chart 1887

48 - Chart 1888

50 - Chart 1889

64 - Letter Dated December 9, 1969 1893

65 - Memorandum 1894

71a-f - Checks 1896

72 - Statements 1902

Page

73A-J - Checks 1906

74A-C - Checks 1916

75A - Check 1919

75B - Invoice 1921

76 - Check 1922

78e - Proposal 1924

80a - Letter Dated April 13, 1970 1996

80a-2 - Modification of Lease 1997

81a-b - Check and Requisition for Check 2002

82 - Pincus Inc. Bills 2003

83 - Schedule 2013

84 - Letter 2019

85 - Letter dated March 17, 1970 2020

86 - Schedule 2021

87c - Phone Message, News Release and Form 2033

89 - Envelope 2036

3501 - Extract From Grand Jury Testimony of Hugh Deane 2037

3516 - Grand Jury Testimony of Bernard Shwidock ..2040

3517 - Grand Jury Testimony of Bernard Shwidock ..2042

3518 - Grand Jury Testimony of Bernard Shwidock ..2047

3519 - Grand Jury Testimony of Bernard Shwidock ..2049

3521 - Grand Jury Testimony of Bernard Shwidock ..2062

3545 - Grand Jury Testimony of John R. Hurley 2075

3569 - Grand Jury Testimony of Fred Paul Mazzeo ..2110

VOLUME IV

DEFENSE EXHIBITS

Defendant Cohen's Exhibits — Page

F - Letter Dated 3/5/69 2127

H - Letter 2128

R - Year End Report 2129

U - Letter Dated 12/24/69 2131

W - Letter Dated 3/16/70 2132

Z - Correspondence and Franchise Agreement 2133

AA - List 2154

EE - Letter Dated 5/18/70 2155

FF - List of Units Under Construction May 15,1970. 2158

SS - Letter Dated 5/30/74 2159

Defendant Duboff's Exhibits

B - Handwritten Statement 2160

K - Statement 2165

Y - Statement 2177

Defendant Deutsch Exhibits

A - Report of Richard Packing Co.....2191

N - Letter Dated 3/19/69 2201

Form No. 100

JUDGE WARD 74 CRIM. 447

FINAL DOCKET

TITLE OF CASE	ATTORNEYS
THE UNITED STATES vs. MILTON COHEN BERNARD DEUTSCH STANLEY DUBOFF	*For U. S.:* Steven A. Schatten, AUSA 264-6435 *For Defendant:*

ABSTRACT OF COSTS	AMOUNT	CASH RECEIVED AND DISBURSED			
		DATE	NAME	RECEIVED	DISBURSED
4)					
e,					
rk,					
rshal,					
orney,					
XXXXXXXXXXXXXXX 18,15					
XXXXXXXXXXXXXXX371,77q,77i,77x					
p. to viol. Securities Law.(Ct.1)					
e offering of circular.(Cts2&3)					
rities fraud.(Ct.4)					
(Four Counts)					

DATE	PROCEEDINGS
4-23-74	Filed information and waiver of indictment.(Related to 73Cr 1085)
	Waiver of indictments filed as to all defts. New information filed in place of indictment 73Cr1085.
	Deft.Cohen (atty. present) Pleads not guilty. Bail continued at $25,000. P.R.B.(see 73Cr1085) Bail limits to include Minn. & Florida.
	Deft.Deutsch(atty. present) Pleads not guilty. Bail continued at $250,000. P.R.B. secured by 10% cash or surety. (as set in 73Cr1084)
	Deft.Duboff(atty. present) Pleads not guilty.Bail as set in 73Cr1084 $100,000. secured by 10% cash or surety continued.
	TRIAL BEGINS AS TO ALL THREE(3) DEFENDANTS:
4-24-74	Trial continued.
4-25-74	Trial continued.

DATE	PROCEEDINGS	CLERK'S FEES PLAINTIFF		DEFENDANT	
5-21-74	MORGINSTIN, HARRY - Filed Govt's Order & Application that Deft. be call to testify --WARD, J.				
5-31-74	STANLEY DUBOFF- Filed Deft's Memorandum in support of Motion to dismiss counts One, Two and Three of the information and to strike certain testimony and evidence admitted during the course of the trial.				
5-31-74	STANLEY DUBOFF- Filed Government's Memorandum of Law in Opposition to Deft's motion to dismiss counts One, Two and Three and to strike certain evidence.				
6-5-74	MILTON COHEN-Filed one envelope of Court's exhibit #5. formerly deft's exhibit MM & MMT-Transcript & tape. Sealed and placed in vault Rm. 602.				
4-29-74	Trial Cont'd				
4-30-74	" "				
5-1-74	" "				
5-2-74	" "				
5-3-74	" "				
5-6-74	" "				
5-7-74	" "				
5-8-74	" "				
5-9-74	" "				
5-10-74	" "				
5-13-74	" "				
5-14-74	" "				
5-15-74	" " Deft. move to strike"among other things" from information-granted.				
5-16-74	" "				
5-20-74	" "				
5-21-74	" "				
5-22-74	" "				
5-23-74	" "				
5-29-74	" "				
5-30-74	" "				
5-31-74	" "				
6-3-74	" " Application to strike last 3 lines of #10-granted.				

Cont'd Page #3.

) Rev. Civil Docket Continuation

E	PROCEEDINGS	Date Order Judgment No
6/4 74	Trial Cont'd	
6/5 74	" "	
6/6 74	" " Jury deliberating	
6/7 74	Jury deliberating. Verdict-All defts. guilty as charged. P.S.I. Ordered. Sentence date 7-16-74 at 9:30 a.m.	
	COHEN-Bail of $25,000.P.R.B. cont'd; Bail limits Minn & Fla.	
	DEUTSCH-Bail $250,000.P.R.B. to be co-signed by wife-security by 10% cash or surety continued. Bail limits extended to 50 states.	
	DUBOFF-Bail of $100,000.P.R.B. to be co-signed by wife-security by 10% cash or surety cont'd. Bail limits extended to 50 states.	
6/11-74	Filed Gov't memorandum of law.	
6/11-74	Filed Gov't requests to charge.	
6-11-74	Filed Gov't supplemental request to charge.	
6-12-74	MILTON COHEN-Filed deft's requests to charge.	
6-11-74	MILTON COHEN-Filed deft's supplemental requests to charge.	
6-11-74	BERNARD DEUTSCH-Filed deft's requests to charge.	
6-11-74	STANLEY DUBOFF-Filed deft's requests to charge.	
74	Filed transcript of record of proceedings, dated 4-22-74	
74	Filed transcript of record of proceedings, dated 5-24,30,31-74 & 6-3-4-74	
74	Filed transcript of record of proceedings, dated 6-5,6,7-74	
74	Filed transcript of record of proceedings, dated 5-1,9,10-74	
74	Filed transcript of record of proceedings, dated 6-13,14-15,16-74	
74	Filed transcript of record of proceedings, dated 5-20,21,22,23-74	
74	Filed transcript of record of proceedings, dated 5-1-2-3,6-74	
74	Filed transcript of record of proceedings, dated 4-24-25-29-30-74	
24-74	Filed ORDER-That a prima facie case was presented to said Grand Jury.....WARD,J.	
7-12-74	BERNARD DEUTSCH-Filed JUDGMENT and COMMITMENT (atty present) It is adjudged that the deft. is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of THREE (3) YEARS ON COUNT 1; THREE (3) YEARS on each of counts 2, 3 and 4 which are to run concurrently with sentence imposed on count 1. Deft. continued on present bail until he posts bail pending appeal fixed in the amount of $250,000.00 P.R.B. secured by 10% cash.....Ward,J.	
7-16-74	STANLEY DUBOFF-Filed JUDGMENT and COMMITMENT (atty present) It is adjudged that the deft. is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of THREE (3) YEARS on count 1; THREE (3) YEARS on each of counts 2,3 and 4 which are to run concurrently with sentence imposed on count 1. Deft. continued on present bail until he posts bail pending appeal fixed in the amount of $100,000.00 PRB co-signed by his wife secured by 10% cash.....Ward,J.	

cont'd. on page #4

DATE	PROCEEDINGS	Date Order Judgment
7-16-74	MILTON COHEN-Filed JUDGMENT and COMMITMENT (atty present) It is adjudged that the deft. is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of SIX (6) MONTHS on count 1; SIX (6) MONTHS on each of counts 2,3 and 4 which are to run concurrently with each other and with sentence imposed on count 1. Deft. continued on present bail until he posts bail pending appeal fixed in the amount of $25,000.00 P.R.B. .....Ward,J.	
7-16-74	MILTON COHEN-Filed unsecured P.R.B. in the amount of $25,000.00 acknowledged by the Clerk.	
7-18-74	STANLEY DUBOFF-Filed notice of appeal from the judgment of conviction as entered on 7-16-74. Mailed notice to Stanley Duboff, 123 West Lakeshore Drive, Rockaway, N.J. 07806 and U.S. Attorney's Office.	
7-19-74	BERNARD DEUTSCH-Filed notice of appeal from the judgment of conviction entered on 7-12-74. Mailed notice to Bernard Deutsch, 163 Whitman Drive, Brooklyn, N.Y. and U.S. Attorney's Office.	

INDICTMENT

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
- X

UNITED STATES OF AMERICA,

-v-

MILTON COHEN, BERNARD DEUTSCH,
STANLEY DUBOFF, and DANIEL DRIESMAN,

Defendants.

- X

The Grand Jury charges:

Introduction

1. At all times material to this indictment BERNARD DEUTSCH and STANLEY DUBOFF, the defendants, were registered representatives at Jaffe & Co., a New York broker-dealer registered with the United States Securities and Exchange Commission.

2. At all times material to this indictment Kelly Andrews & Bradley (hereinafter "Kelly Andrews"), a co-conspirator, was a broker-dealer registered with the United States Securities and Exchange Commission. Bernard Shwidock, a co-conspirator, was president of Kelly Andrews.

3. At all times material to this indictment, DANIEL DRIESMAN, the defendant, was an attorney, and a principal of Kelly Andrews, Stuart Schiffman a co-conspirator,

was an attorney who represented Kelly Andrews.

4. At all times material to this indictment, MILTON COHEN, the defendant, was president of Richard Packing Co. (''Richard Packing''), a company located in St. Paul, Minnesota, whose securitie were traded by the investing public.

5. Between July, 1968 and March, 1969 approximately 100,000 shares of Richard Packing common stock were traded on the over-the-counter market. On or about March 11, 1969, Richard Packing issued an offering circular which set forth an offer to sell an additional 10,000 shares of its common stock to the public for an amount to be determined by the market and not to exceed $300,000.

The Conspiracy

6. From on or about July, 1968 to on or about July, 1970, in the Southern District of New York and elsewhere, BERNARD DEUTSCH, STANLEY DUBOFF, MILTON COHEN and DANIEL DRIESMAN, the defendants, and Bernard Schwidock, Stuart Schiffman and Kelly Andrews, named herein as co-conspirators but not as defendants, and others to the Grand Jury known and unknown, unlawfully, willfully and knowingly, did combine, conspire, confederate and agree together and with each other to commit certain offenses against the United States, to wit, violation of Title 15, United States Code, Sections 77q, 77j, 77x, Rule 256 (e) (17 C. F. R. Section

230.256), 78j(b) and 78 (ff), and Title 18, United States Code, Sections 1341 and 2.

7. It was part of the said conspiracy that the defendants and their co-conspirators, in connection with a purported public offering of Richard Packing common stock, for which offering a Form 1-A notification had been filed with the United States Securities and Exchange Commission, unlawfully, wilfully and knowingly, and directly and indirectly, would use, and cause the use of, the mails to transmit false and misleading offering circulars relating to said public offering.

8. It was further a part of said conspiracy that the defendants and their co-conspirators unlawfully, wilfully and knowingly, in the offer and sale of Richard Packing common stock, by the use of means and instruments of transportation and communication in interstate and foreign commerce and by the use of the mails, would directly and indirectly, (a) employ devices, schemes and artifices to defraud, (b) obtain money and property by means of untrue statements of material facts and omissions to state facts necessary to be stated in order to make the statements made, in the light of the circumstances under which they were made, not misleading, and (c) engage in transactions, practices and courses of business which would and did operate as a fraud and deceit upon the purchasers of Richard Packing common stock.

9. It was further a part of said conspiracy that the defendants and their co-conspirators unlawfully, wilfully and knowingly, would devise a scheme and artifice to defraud purchasers of Richard Packing, common stock and for obtaining money by means of false and fraudulent pretenses, representations and promises and for the purpose of executing such scheme and artifice would knowingly cause mail matter to be delivered by mail according to the direction thereon.

10. It was further a part of said conspiracy that the defendants and their co-conspirators unlawfully, wilfully and knowingly, in connection with the purchase and sale of Richard Packing common stock, would and did, directly and indirectly, by the use of means and instrumentalities of interstate commerce and of the mails, use and employ manipulative devices and contrivances in contravention or Rule 10(b)-5 (17 C.F.R. 240.10b-5), a rule prescribed by the United States Securities and Exchange Commission as necessary and appropriate in the public interest and for the protection of investors.

Means of the Conspiracy

11. Among the means by which the defendants and their co-conspirators would and did carry out the said conspiracy were the following:

(a) Between July 1968 and July 1970, BERNARD DEUTSCH

and STANLEY DUBOFF, the defendants, for the purpose of causing the price of Richard Packing common stock to rise in the open market, caused accounts over which they exercised control or in which they had a beneficial interest to purchase and sell said stock so as to (1) restrict the available supply of said stock to the investing public and (2) create the appearance of market activity and demand in said stock.

(b) In or about October, 1968, BERNARD DEUTSCH and STANLEY DUBOFF, the defendants, arranged with co-conspirators Bernard Shwidock and Kelly Andrews and the defendant DANIEL DRIESMAN for co-conspirator Kelly Andrews to trade Richard Packing common stock as directed by DEUTSCH and DUBOFF, for the account of Kelly Andrews, on the condition that Kelly Andrews pay secret kickbacks to the defendants DEUTSCH and DUBOFF amounting to approximately 30 percent of the net profits received from such trades by Kelly Andrews.

(c) In accordance with the arrangements described in paragraph (b) above, conspirators Bernard Shwidock and Kelly Andrews paid to defendants BERNARD DEUTSCH and STANLEY DUBOFF approximately $15,000 in secret kickbacks in the form of cash and in the form of checks to the Reiss Bank, Zurich, Switzerland.

(d) On or about March 1969, the defendants BERNARD DEUTSCH, STANLEY DUBOFF and MILTON COHEN caused co-conspirators

Bernard Shwideck and Kelly Andrews to sell 10,000 shares of Richard Packing common stock, purportedly being offered for distribution to the public, to accounts over which the defendants BERNARD DEUTSCH and STANLEY DUBOFF exercised control or in which they had a beneficial interest.

(e) Commencing on or about March, 1969 BERNARD DEUTSCH and STANLEY DUBOFF, the defendants, for the purpose of causing the price of Richard Packing common stock to rise in the open market, induced certain mutual funds in Denver, Colorado, namely, Financial Venture Fund, Financial Dynamics Fund, and Financial Industrial Fund to purchase Richard Packing common stock through Jaffee & Co., a registered broker-dealer, where they were registered representatives, from accounts over which they exercised control or in which they had a beneficial interest and other accounts so as to (1) restrict the available supply of Richard Packing common stock to the investing public and (2) create the appearance of market activity and demand in said stock.

(f) As a result of their manipulative activities, the defendants (1) caused the price of Richard Packing common stock to rise from approximately $5 per share to approximately $53 per share and (2) caused the aforementioned mutual funds in Denver, Colorado to suffer losses in their investments in Richard Packing of approximately $5.1 million.

(g) On or about March 11, 1969, MILTON COHEN and BERNARD DEUTSCH, the defendants, caused to be filed with the United States Securities and Exchange Commission a false and misleading offering circular in connection with a purported public offering of 10,000 shares of Richard Packing common stock, which failed to disclose, among other things: (1) that the offering of 10,000 shares was not being made to the public but was being offered to and purchased by accounts over which the defendants BERNARD DEUTSCH and STANLEY DUBOFF exercised control or in which they had a beneficial interest; (2) that the defendants BERNARD DEUTSCH and STANLEY DUBOFF and co-conspirators Kelly Andrews and Bernard Shwidock were underwriters in the aforesaid offering and were receiving compensation therefor; (3) that prior to the effective date of the offering the defendants BERNARD DEUTSCH and MILTON COHEN and co-conspirator Bernard Shwidock had already determined the amount of proceeds to go to Richard Packing at $280.00, having falsely stated in the offering circular that the proceeds to Richard Packing would be determined by the market and could be as high as $300,000, (4) that Richard Packing would not offer the shares through solicitation by its directors, officers and employees as had been stated in the offering circular, (5) that the defendants BERNARD DEUTSCH and STANLEY DUBOFF in return for services to Richard

Packing, including the instant offering, had received in the past and would receive in the future, compensation, including Richard Packing common stock and stock options.

(g) In or about March, 1969 the defendants and co-conspirators caused the false and misleading offering circular filed with the United States Securities and Exchange Commission to be mailed to various persons.

OVERT ACTS

In furtherance of said conspiracy and to effect the objects thereof, the defendants and their co-conspirators committed the following overt acts, among others, in the Southern District of New York:

1. On or about March, 1969, the defendant STANLEY DUBOFF caused Kelly Andrews to enter an order to purchase Richard Packing common stock.

2. On or about March 5, 1969, the defendant MILTON COHEN caused a letter to be mailed to co-conspirator Bernard Shwidock.

3. On or about March 14, 1969, co-conspirator Kelly Andrews purchased 1000 shares of Richard Packing Co. common stock.

4. On or about March 18, 1969, the defendant BERNARD DEUTSCH caused Jaffee & Co. to purchase 5000 shares of Richard Packing Co. common stock for Financial Venture Fund.

5. On or about March 25, 1969, Kelly Andrews issued a check.

6. Each of the mailings alleged in Counts 2 through 15 of this Indictment are repeated and realleged as if fully set forth, as overt acts.

(Title 18, United States Code, Section 371.)

COUNTS TWO THROUGH FIFTEEN

The Grand Jury further charges:

1. From on or about March 11, 1969, to on or about July, 1970, in the Southern District of New York, BERNARD DEUTSCH, STANLEY DUBOFF and MILTON COHEN, the defendants, unlawfully, wilfully and knowingly, in the offer and sale of securities, to wit, Richard Packing common stock, by the use of means and instruments of transportation and communication in interstate commerce and by use of the mails, directly and indirectly, (a) did employ devices, schemes and artifices to defraud; (b) did obtain money and property by means of untrue statements of material facts and omissions to state facts necessary to be stated in order to make the statements made, in the light of the circumstances under which they were made, not misleading, and (c) did engage in transactions, practices and courses of business which would and did operate as a fraud and deceit upon purchasers of said securities.

2. The allegations contained in paragraph eleven of

INDICTMENT

Count One of this Indictment are repeated and realleged as though fully set forth herein, as constituting and describing some of the means by which said defendants committed the offenses charged in Counts Two through Fifteen.

3. On or about the dates hereinafter set forth in Counts Two through Fifteen, in the Southern District of New York, said defendants did use the mails by causing to be delivered by mail, mail matter hereinafter set forth according to the direction thereon, to the addresses hereinafter set forth:

Count	Addressees	Date	Matter
2	Kelly Andrews & Bradley 111 John St. New York, N.Y. 10038 Attention: Bernard Shwidock	3/5/69	Letter
3	Richard Packing 1525 N. Concord St. S. St. Paul, Minnesota 55075	3/14/73	Confirmation
4	Richard Packing 153 No. Concord St. S. St. Paul Minnesota	3/18/69	Confirmation
5	Richard Packing 153 No. Concord South St. Paul, Minnesota	3/18/69	Confirmation
6	Financial Venture Fund P.O. Box 2040 Denver, Colo. 80201	3/18/69	Confirmation
7	Financial Venture Fund P.O. Box 2040 Denver, Colo. 80201	3/18/69	Confirmation

8	Financial Venture Fund P.O. Box 2040 Denver, Colo. 80201	3/25/69	Confirmation
9	Harry Morginstin 10 Ave. "P" Brooklyn, N.Y.	4/3/69	Confirmation and offering circular
10	William Harris 2418 Brighan St. Brooklyn, N.Y.	4/3/69	Confirmation and offering circular
11	Richard Packing 1523 North Concord St. Paul, Minnesota	4/4/69	Confirmation
12	Richard Packing 1523 North Concord St. Paul, Minnesota	4/4/69	Confirmation
13	Harry Morginstin 10 Ave. "P" Brooklyn, N.Y.	4/7/69	Confirmation
14	William Harris 2418 Brigham St. Brooklyn, N.Y.	4/7/69	Confirmation
15	Financial Dynamics Fund, Inc. Box 480 Denver, Colo. 80201	11/06/69	Confirmation

(Title 15, United States Code, Sections 77q and 77x;
Title 18, United States Code, Section 2.)

COUNT SIXTEEN

The Grand Jury further charges:

On or about March 11, 1969, in the Southern District of New York, BERNARD DEUTSCH, STANLEY DUBOFF, MILTON COHEN and DANIEL DRIESMAN, the defendants, unlawfully, wilfully and knowingly did, directly and indirectly, use, and cause the use of, the mails to carry and transmit false and misleading

offering circulars for a public offering of Richard Packing common stock as to which a notification on Form 1-A had been filed with the United States Securities and Exchange Commission; these offering circulars were false and misleading in that they failed to disclose, among other things, (1) that the offering of 10,000 shares was not being made to the public but was being offered to and purchased by accounts over which the defendants BERNARD DEUTSCH and STANLEY DUBOFF exercised control or in which they had a beneficial interest; (2) that the defendants, BERNARD DEUTSCH and STANLEY DUBOFF and co-conspirators Kelly Andrews and Bernard Shwidock were underwriters in the aforesaid offering and were receiving compensation therefor; (3) that prior to the effective date of the offering the defendants BERNARD DEUTSCH and MILTON COHEN and co-conspirator Bernard Shwidock had already determined the amount of proceeds to Richard Packing at $280,000, having represented in the offering circular that the proceeds to Richard Packing would be determined by the market and could be as high as $300,000; (4) that Richard Packing would not offer the shares through solicitation by its directors, officers and employees as represented in the offering circular; (5) that the defendants BERNARD DEUTSCH and STANLEY DUBOFF, in return for services to Richard Packing, were receiving compensation, including Richard Packing common stock and stock options.

2. The addresses to whom envelopes containing the above-described offering circular were mailed are those identified in counts 9 and 10 of this Indictment, which are incorporated herein as if fully set forth.

(Title 15, United States Code, Sections 77j and 77x;
Title 17, Code of Federal Regulations, Section 230.256;
Title 18, United States Code, Section 2).

_____
Foreman

_____
PAUL J. CURRAN
United States Attorney

INFORMATION

(SAME TITLE)

COUNT ONE

The United States Attorney charges:

Introduction

1. At all times material to this Information BERNARD DEUTSCH and STANLEY DUBOFF, the defendants, were registered representatives at Jaffee & Co., a New York broker-dealer registered with the United States Securities and Exchange Commission.

2. At all times material to this Information Kelly Andrews & Bradley (hereinafter ''Kelly Andrews''), a co-conspirator, was a broker-dealer registered with the United States Securities and Exchange Commission. Bernard Shwidock, a co-conspirator, was president of Kelly Andrews.

3. At all times material to this Information, Daniel Driesman, a co-conspirator, was an attorney, and a principal of Kelly Andrews; Stuart Schiffman, a co-conspirator, was an attorney who represented Kelly Andrews.

4. At all times material to this Information, MILTON COHEN, the defendant, was president of Richard Packing Co. (''Richard Packing''), a company located in St. Paul, Minnesota, whose securities were traded by the investing public.

5. Between July, 1968 and March, 1969, approximately 100,000 shares of Richard Packing common stock were traded

on the over-the-counter market. On or about March 11, 1969, Richard Packing issued an offering circular which set forth an offer to sell an additional 10,000 shares of its common stock to the public for an amount to be determined by the market and not to exceed $300,000.

The Conspiracy

6. From on or about July, 1968 to on or about July, 1970, in the Southern District of New York and elsewhere, BERNARD DEUTSCH, STANLEY DUBOFF and MILTON COHEN, the defendants, and Daniel Driesman, Bernard Shwidock, Stuart Schiffman, Kelly Andrews, V.F. Naddeo Co., Inc., Fred Mazzio, Alessandrini & Co., Inc., Raymond Weiss, New Dimension Securities Corp., Stanley Ryback, Somer Jack Rothman, Jack Reiss, Hugh Deane and John Hurley, named herein as co-conspirators but not as defendants, and others to the Grand Jury known and unknown, unlawfully, wilfully and knowingly, did combine, conspire, confederate and agree together and with each other to commit certain offenses against the United States, to wit, violation of Title 15, United States Code, Sections 77q, 77j, 77x, Rule 256(e) (17 C.F.R. Section 230.256), 78j(b) and 78(ff), and Title 18, United States Code, Sections 1341 and 2.

7. It was part of the said conspiracy that the defendants and their co-conspirators, in connection with a purported public offering of Richard Packing common stock, for which

offering a Form 1-A notification had been filed with the United States Securities and Exchange Commission, unlawfully, wilfully and knowingly, and directly and indirectly, would use, and cause the use of, the mails to transmit false and misleading offering circulars relating to said public offering.

8. It was further a part of said conspiracy that the defendants and their co-conspirators unlawfully, wilfully and knowingly, in the offer and sale of Richard Packing common stock, by the use of means and instruments of transportation and communication in interstate and foreign commerce and by the use of the mails, would directly and indirectly, (a) employ devices, schemes and artifices to defraud, (b) obtain money and property by means of untrue statements of material facts and omissions to state facts necessary to be stated in order to make the statements made, in the light of the circumstances under which they were made, not misleading, and (c) engage in transactions, practices and courses of business which would and did operate as a fraud and deceit upon the purchasers of Richard Packing common stock.

9. It was further a part of said conspiracy that the defendants and their co-conspirators unlawfully, wilfully and knowingly, would devise a scheme and artifice to defraud purchasers of Richard Packing common stock and for obtaining money by means of false and fraudulent pretenses, represen-

tations and promises and for the purpose of executing such scheme and artifice would knowingly cause mail matter to be delivered by mail according to the direction thereon.

10. It was further a part of said conspiracy that the defendants and their co-conspirators unlawfully, wilfully and knowingly, in connection with the purchase and sale of Richard Packing common stock, would and did, directly and indirectly, by the use of means and instrumentalities of interstate commerce and of the mails, use and employ manipulative devices and contrivances in contravention of Rule 10(b)-5 (17 C.F.R. 240-10b-5), a rule prescribed by the United States Securities and Exchange Commission as necessary and appropriate in the public interest and for the protection of investors.

Means of the Conspiracy

11. Among the means by which the defendants and their co-conspirators would and did carry out the said conspiracy were the following:

(a) Between July, 1968 and July, 1970, BERNARD DEUTSCH and STANLEY DUBOFF, the defendants, for the purpose of causing the price of Richard Packing common stock to rise in the open market, caused accounts over which they exercised control or in which they had a beneficial interest to purchase and sell said stock so as to (1) restrict the available supply of said stock to the investing public and

(2) create the appearance of market activity and demand in said stock.

(b) In or about October, 1969, BERNARD DEUTSCH and STANLEY DUBOFF, the defendants, arranged with co-conspirators Bernard Shwidock and Kelly Andrews and Daniel Driesman for co-conspirator Kelly Andrews to trade Richard Packing common stock as directed by DEUTSCH and DUBOFF, for the account of Kelly Andrews, on the condition that Kelly Andrews pay secret kickbacks to the defendants DEUTSCH and DUBOFF amounting to approximately 30 percent of the net profits received from such trades by Kelly Andrews.

(c) In accordance with the arrangements described in paragraph (b) above, conspirators Bernard Shwidock and Kelly Andrews paid to defendants BERNARD DEUTSCH and STANLEY DUBOFF approximately $15,000 in secret kickbacks in the form of cash and in the form of checks to the Reiss Bank, Zurich, Switzerland.

(d) On or about March, 1969, the defendants BERNARD DEUTSCH, STANLEY DUBOFF and MILTON COHEN caused co-conspirators Bernard Shwidock and Kelly Andrews to sell 10,000 shares of Richard Packing common stock, purportedly being offered for distribution to the public, to accounts over which the defendants BERNARD DEUTSCH and STANLEY DUBOFF exercised control or in which they had a beneficial interest.

(e) Commencing on or about March 1969, BERNARD DEUTSCH

and STANLEY DUBOFF, the defendants, for the purpose of causing the price of Richard Packing common stock to rise in the open market, induced certain mutual funds in Denver, Colorado, namely, Financial Venture Fund, Financial Dynamics Fund, and Financial Industrial Fund to purchase Richard Packing common stock through Jaffee & Co., a registered broker-dealer, where they were registered representatives, from accounts over which they exercised control or in which they had a beneficial interest and other accounts so as to (1) restrict the available supply of Richard Packing common stock to the investing public and (2) create the appearance of market activity and demand in said stock.

(f) As a result of their manipulative activities, the defendants (1) caused the price of Richard Packing common stock to rise from approximately $25 per share to approximately $53 per share and (2) caused the aforementioned mutual funds in Denver, Colorado to suffer losses in their investments in Richard Packing of approximately $5.1 million.

(g) On or about March 11, 1969, MILTON COHEN and BERNARD DEUTSCH, the defendants, caused to be filed with the United States Securities and Exchange Commission a false and misleading offering circular in connection with a purported public offering of 10,000 shares of Richard Packing common stock, which failed to disclose, among other things: (1) that the offering of 10,000 shares was not being made

to the public but was being offered to and purchased by accounts over which the defendants BERNARD DEUTSCH and STANLEY DUBOFF exercised control or in which they had a beneficial interest; (2) that the defendants BERNARD DEUTSCH and STANLEY DUBOFF and co-conspirators Kelly Andrews and Bernard Shwidock were underwriters in the aforesaid offering and were receiving compensation therefor; (3) that prior to the effective date of the offering the defendants BERNARD DEUTSCH and MILTON COHEN and co-conspirator Bernard Shwidock had already determined the amount of proceeds to go to Richard Packing at $280,000, having falsely stated in the offering circular that the proceeds to Richard Packing would be determined by the market and could be as high as $30,000; (4) that Richard Packing would not offer the shares through solicitation by its directors, officers and employees as had been stated in the offering circular; (5) that the defendants BERNARD DEUTSCH and STANLEY DUBOFF in return for services to Richard Packing, including the instant offering, had received in the past and would receive in the future, compensation, including Richard Packing common stock and stock options.

(h) In or about March, 1969, the defendants and co-conspirators caused the false and misleading offering circular filed with the United States Securities and Exchange Commission to be mailed to various persons.

INFORMATION

OVERT FACTS

In furtherance of said conspiracy and to effect the objects thereof, the defendants and their co-conspirators committed the following overt acts, among others, in the Southern District of New York:

1. On or about March, 1969, the defendant STANLEY DUBOFF caused Kelly Andrews to enter an order to purchase Richard Packing common stock.

2. On or about March 5, 1969, the defendant MILTON COHEN caused a letter to be mailed to co-conspirator Bernard Shwidock.

3. On or about March 14, 1969, co-conspirator Kelly Andrews purchased 1000 shares of Richard Packing Co. common stock.

4. On or about March 18, 1969, the defendant BERNARD DEUTSCH caused Jaffee & Co. to purchase 5000 shares of Richard Packing Co. common stock for Financial Venture Fund.

5. On or about March 25, 1969 Kelly Andrews issued a check.

6. Each of the mailings alleged in Counts 2 and 3 of this Information are repeated and realleged as if fully set forth, as overt acts.

(Title 18, United States Code, Section 371.)

INFORMATION

COUNT TWO

The United States Attorney further charges:

1. From on or about March 11, 1969, to on or about July, 1970, in the Southern District of New York, BERNARD DEUTSCH, STANLEY DUBOFF and MILTON COHEN, the defendants, unlawfully, wilfully and knowingly, in the offer and sale of securities, to wit, Richard Packing common stock, by the use of means and instruments of transportation and communication in interstate commerce and by use of the mails, directly and indirectly, (a) did employ devices, schemes and artifices to defraud, (b) did obtain money and property by means of untrue statements of material facts and omissions to state facts necessary to be stated in order to make the statements made, in the light of the circumstances under which they were made, not misleading, and (c) did engage in transactions, practices and courses of business which would and did operate as a fraud and deceit upon purchasers of said securities.

2. The allegations contained in paragraph eleven of Count One of this Information are repeated and realleged as though fully set forth herein, as constituting and describing offenses charged in Count Two.

3. On or about the dates hereinafter set forth in Count Two, in the Southern District of New York, said defendants did use the mails by causing to be delivered

INFORMATION

(Title 15, United States Code, Sections 77j and 77x; Title 17, Code of Federal Regulations, Section 230.256; Title 18, United States Code, Section 2.)

PAUL J. CURRAN
United States Attorney

INFORMATION

Richard Packing 1523 North Concord St. Paul, Minnesota	4/4/69	Confirmation
Harry Morginstin 10 Ave. ''P'' Brooklyn, N.Y.	4/7/69	Confirmation
William Harris 2418 Brigham St. Brooklyn, N.Y.	4/7/69	Confirmation

(Title 15, United States Code, Sections 77Q and 77x;
Title 18, United States Code, Section 2.)

COUNT THREE

The United States Attorney further charges:

1. From on or about March 11, 1969, to on or about July, 1970, in the Southern District of New York, BERNARD DEUTSCH, STANLEY DUBOFF and MILTON COHEN, the defendants unlawfully, wilfully and knowingly, in the offer and sale of securities, to wit, Richard Packing common stock, by the use of means and instruments of transportation and communication in interstate commerce and by use of the mails, directly and indirectly, (a) did employ devices, schemes and artifices to defraud, (b) did obtain money and property by means of untrue statements of material facts and omissions to state facts necessary to be stated in order to make the statements made, in the light of the circumstances under which they were made, not misleading, and (c) did engage in transactions, practices and courses of business which would and did operate as a fraud and deceit upon purchasers of said securities.

INFORMATION

2. The allegations contained in paragraph eleven of Count One of this Information are repeated and realleged as though fully set forth herein, as constituting and describing offenses charged in Count Three.

3. On or about the date hereinafter set forth in Count Three, in the Southern District of New York, said defendants did use the mails by causing to be delivered by mail, mail matter hereinafter set forth according to the direction thereon, to the addressee hereinafter set forth:

Addressee	Date	Matter
Financial Dynamics Fund, Inc. Box 480 Denver, Colo. 80201	11/6/69	Confirmation

(Title 15, United States Code, Sections 77q and 77x;
Title 18, United States Code, Section 2.)

COUNT FOUR

The United States Attorney further charges:

On or about March 11, 1969, in the Southern District of New York, BERNARD DEUTSCH, STANLEY DUBOFF and MILTON COHEN, [illegible]fendants, unlawfully, wilfully and knowingly did, d[illegible] and indirectly, use, and cause the use of the [illegible]ails to carry and transmit false and misleading offering circulars for a public offering of Richard Packing common stock as to which a notification on Form 1-A had been filed with the United States Securities and Exchange Commission; these offering circulars were false and misleading in that

they failed to disclose, among other things, (1) that the offering of 10,000 shares was not being made to the public but was being offered to and purchased by accounts over which the defendants BERNARD DEUTSCH and STANLEY DUBOFF exercised control or in which they had a beneficial interest; (2) that the defendants, BERNARD DEUTSCH and STANLEY DUBOFF and co-conspirators Kelly Andrews and Bernard Shwidock were underwriters in the aforesaid offering and were receiving compensation therefor; (3) that prior to the effective date of the offering the defendants BERNARD DEUTSCH and MILTON COHEN and co-conspirator Bernard Shwidock had already determined the amount of proceeds to Richard Packing at $280,000, having represented in the offering circular that the proceeds to Richard Packing would be determined by the market and could be as high as $300,000; (4) that Richard Packing would not offer the shares through solicitation by its directors, officers and employees as represented in the offering circular; (5) that the defendants BERNARD DEUTSCH and STANLEY DUBOFF, in return for services to Richard Packing, were receiving compensation, including Richard Packing common stock and stock options.

2. The addressees to whom envelopes containing the above-described offering circular were mailed are those identified in counts 2 and 3 of this Information, which are incorporated herein as if fully set forth).

INFORMATION

(Title 15, United States Code, Sections 77j and 77x; Title 17, Code of Federal Regulations, Section 230.256; Title 18, United States Code, Section 2.)

PAUL J. CURRAN
United States Attorney

EXHIBIT: LETTER FROM JOHN M. WALKER DATED 1/15/74

JMW:dm

January 15, 1974

Honorable Robert J. Ward
United States District Judge
United States Courthouse
Foley Square
New York, N.Y. 10007

Re: United States v. Milton Cohen, et al.
73 Cr. 1085 - Informal Discovery Conference

Dear Judge Ward:

On January 14, 1974, a conference was held at the United States Attorneys Office between the prosecution and the defense in the above captioned matter for the purpose of informally resolving discovery issues. Present were Assistant United States Attorney John M. Walker, Jr., and Messrs. Morton Robson (Duboff), Marvin Segal (Deutsch), David Brodsky (Driesman) and Edward Overstein and Frederick Blcok (Cohen). I agreed to memorialize in writing the discovery items and particulars to which the government consented. This letter constitutes that memorialization.

Brady Material.

The government agreed to furnish any Brady material at trial and represented that at present it was aware of none.

Statements of Defendants

The government agreed to furnish to each defendant, at a time to be mutually arranged, that defendant's own statements to the government including grand jury testimony and notes of interviews, if any.

Tapes and Wiretaps

The government represented that to its knowledge there were no tapes or wiretaps involved in this case. The government stated that it would check on certain investigations relating to J.D.L. activities to ascertain of the existence of wiretaps of Deutsch conversations.

Scientific Reports

The government represented that it had conducted no scientific tests in its investigation and, hence, had no reports to be turned over. The government stated that should any such tests be conducted prior to trial reports of same would be made available to defense counsel upon receipt by the government.

Documents

1. The government agreed to furnish:

(a) copies of the confirmation slips referred to in counts 2 through 15;
(b) copies of the offering circular referred to in counts 9 and 10.
(c) copies of the confirmations supporting overt acts 1, 3 and 4.
(d) copies of the confirmations in its possession covering the Kelly, Andrews participation in the second Reg. A. offering of Richards Packing common stock.

2. The government agreed to make available for inspection by counsel for the defendants at the United States Attorney's Office records in its possession of the following firms: Kelly, Andrews and Bradley, Jaffee and Co., the Denver Funds, and Richards Packing.

3500 Material and Other Material relating to Government Witnesses

The government agreed to furnish 3500 material prior to the direct testimony of each witness. The government represented that such material was not voluminous.

The government agreed to furnish prior to direct examination, a statement of felony convictions of any government witness, if any, and also a statement of any understanding between the government and any witness respecting prosecutions of that witness.

Particulars

The government agreed to furnish in a formal Bill

of Particulars the following particulars:

1. The names of any unnamed co-conspirators known to the government now or in the future.

2. With respect to each overt act, the approximate place.

3. The government represented that Driesman was not a direct participant in the overt acts alleged, and agreed to particularize his involvement regarding the control of accounts in the manipulation and distribution in the second Reg. A. offering of Richards Packing.

4. The government agreed to particularize that the cash payments alleged in paragraph 11(c) were not to the Reiss Bank.

5. The government agreed to furnish the defendant Cohen with papers obtained from Cohen during the investigation.

6. The government stated that the false statements and omissions referred to in counts 2 through 15 included those specified in counts 16.

7. The government declined to furnish further particulars directed to paragraph 11 of the Indictment alleging the means by which the conspiracy was effected on the ground that the means paragraph itself was sufficiently detailed and further particulars were not required.

Very truly yours,

PAUL J. CURRAN
United States Attorney

By:
JOHN M. WALKER, Jr.
Assistant U.S. Attorney
(212) 264-6474

cc: Marvin Segal, Esq.
Morton Robson, Esq.
David Brodsky, Esq.
Frederick Block, Esq.

LETTER FROM FREDERICK H. BLOCK DATED JANUARY 23, 1974

January 23, 1974

Hon. Robert J. Ward
United States Courthouse
Foley Square
New York, N.Y. 10007

Re: United States v. Milton Cohen
et al 73 Cr. 1085

Dear Judge Ward:

This letter refers to Mr. Walker's letter to you of January 15, 1974 and is written on behalf of the defendant Milton Cohen by the undersigned and co-counsel S. Edward Orenstein.

In addition to the particulars and discovery set forth by Mr. Walker, we desire the following on behalf of our client, some of which, based on our informal conference with Mr. Walker, we believe to be non-controversial:

1. Charts showing daily activity in Richard Packing Company stock from June 8, 1968 - March of 1969;

2. All filings with the SEC by or on behalf of Richard Packing Company;

3. The testimony on direct and cross of Stuart Schiffman at the trial last summer before Judge Motley in the Allstate Metals case;

4. Particularization of the accounts mentioned in paragraph 11 (a) of the indictment which the defendants Deutsch and Duboff allegedly exercised control over, or in which they had a beneficial interest;

5. Particularization of any control over or beneficial interest in such accounts by defendant Cohen;

6. Particularization giving dates and amounts of the cash payments referred to in paragraph 11 (C) of the indictment;

7. Particularization with respect to any claimed involvement of the defendants Cohen and/or Dreisman in the receipt of the payments referred to in 11 (c).

May I respectfully suggest that your Honor schedule a conference for the purpose of resolving such of these requests as Mr. Walker may object to and for the further purpose of fixing a schedule for the furnishing of the Bill of Particulars and for the examination of the documents which the government has agreed to make available.

Respectfully,

Frederick H. Block

FHB:al

cc: Assistant U.S. Attorney
John M. Walker Jr.
Morton Robson, Esq.
Marvin Segal, Esq.
David Brosky, Esq.

BILL OF PARTICULARS

(SAME TITLE)

SIRS:

The United States of America, as and for its Bill of Particulars herein, alleges:

1. With respect to Paragraph 11(a) in Count I of the Indictment, the government alleges that the defendants Deutsch and Duboff had a beneficial interest in the accounts of Harry Morginstin, Beatrice Morginstin, William Harris and Rose Harris. In addition, they were undisclosed principals of New Dimension Securities Corp. The defendant Cohen had control over accounts in his own name, those in the name of Richard Packing Company, its subsidiaries and affiliates, and accounts of family members and family corporations or trusts. The defendant Driesman did not have a beneficial interest in any account.

2. Paragraph 11(f) of the Indictment alleges in part that ''the defendants (1) caused the price of Richard Packing common stock to rise from approximately $5 per share to approximately $53 per share.'' The Government alleges that it should read ''from approximately $25 per share to approximately $53 per share.''

3. With respect to the overt acts as set forth in Count I of the indictment, the Government alleges the following concerning the date and place thereof and the persons who were present during said overt acts:

Overt Act No. 1

On or about March 18, 1969 the defendant Stanley Duboff caused Kelly, Andrews & Bradley, Inc., located in New York City, to place an order for 5000 shares of Richard Packing common stock.

Overt Act No. 2

The letter referred to was mailed to co-conspirator Bernard Shwidock at Kelly, Andrew & Bradley, Inc.

Overt Act No. 3

On March 14, 1969, co-conspirator Bernard Shwidock caused Kelly, Andrews & Bradley, Inc., located in New York City, to purchase 1000 shares of Richard Packing common stock.

Overt Act No. 4

On March 18, 1969, the defendant Bernard Deutsch caused Jaffee & Co. located in New York City, to purchase 5000 shares of Richard Packing common stock for the Financial Venture Fund, located in Denver, Colorado.

Overt Act No. 5

On March 25, 1969 co-conspirator Bernard Shwidock caused Kelly, Andrews & Bradley, Inc., located in New York City to issue a check to Richard Packing Company for $154,000.

Overt Act No. 6

Copies of the relevant letter, confirmations and offering circular are available for inspection and copying

4. In addition to the defendants and unindicted co-conspirators named in Count One of the Indictment, the following are the others involved in the conspiracy alleged therein:

(1) V.F. Naddeo & Co., Inc. (2) Fred Mazzeo (3) Alessandrini & Co., Inc. (4) Raymond Weiss (5) New Dimension Securities Corp. (6) Stanley Ryback (7) Somer Jack Rothman (8) Jack Reiss (9) Hugh Deane

5. Pursuant to Rule 7(a) of the Federal Rules of Criminal Procedure, the Government reserves the right to amend this Bill of Particulars at any time subject to such conditions as justice requires.

Dated: New York, New York
March 27, 1974

Yours, etc.

PAUL J. CURRAN
United States Attorney for the
Southern District of New York
Attorney for the United States
of America

By:
GERALD A. FEFFER
Assistant United States Attorney
Office and P.O. Address
United States Courthouse
Foley Square
New York, N.Y. 10007
Tel. (212) 264-6562

TO: MARVIN SIEGEL, ESQ.
Siegel & Hundley
375 Park Avenue
New York, N.Y. 10022
Attorney for Defendant Deutsch

MORTON S. ROBSON, ESQ.
Zissu, Lore, Malper & Robson
450 Park Avenue
New York, N.Y. 10022
Attorney for Defendant Duboff

S. EDWARD ORENSTEIN, ESQ.
401 Broadway
New York, N.Y.
Attorney for Defendant Cohen

FREDERICK H. BLOCK, ESQ.
Bernstein, Seawell, Kaplan & Block
295 Madison Avenue
New York, N.Y.
Attorney for Defendant Cohen

DAVID M. BRODSKY, ESQ.
Guggenheimer & Untermeyer
80 Pine Street
New York, N.Y. 10005
Attorney for Defendant Driesman

AMENDED BILL OF PARTICULARS

(SAME TITLE)

SIRS:

The United States of America, as and for its Amended Bill of Particulars herein, alleges:

1. With respect to paragraph 11(a) of Count I of the Indictment, the Government alleges that the defendants Deutsch and Duboff in large part directed and controlled the trading of Richard Packing Co. common stock through the trading accounts of Kelly, Andrews & Bradley, Inc., New Dimension Securities Corp. and V. F. Naddeo & Co.

2. In addition to the defendants and unindicted co-conspirators named in Count I of the Indictment and in paragraph 4 of the Bill of Particulars, the Government alleges that Jack Hurley was a member of the conspiracy alleged in Count I.

3. Pursuant to Rule 7(a) of the Federal Rules of Criminal Procedure, the Government reserves the right to further amend this Amended Bill of Particulars at any time subject to such conditions as justice requires.

Dated: New York, New York
April 12, 1974

Yours, etc.

PAUL J. CURRAN
United States Attorney for the
Southern District of New York
Attorney for the United
States of America

By:

GERALD A. FEFFER
Assistant United States Attorney
Office and P.O. Address
United States Courthouse
Foley Square
New York, N.Y. 10007
Tel. (212) 264-6562

TO: MARVIN E. SEGAL, ESQ.
Segal & Hundley
375 Park Avenue
New York, N.Y. 10022
Attorney for Defendant Deutsch

MORTON S. ROBSON, ESQ.
Zissu, Lore, Halper & Robson
450 Park Avenue
New York, N.Y. 10022
Attorney for Defendant Duboff

S. EDWARD ORENSTEIN, ESQ.
401 Broadway
New York, N.Y. 10013
Attorney for Defendant Cohen

FREDERICK H. BLOCK, ESQ.
Bernstein, Seawell, Kaplan & Block
295 Madison Avenue
New York, N.Y. 10017
Attorney for Defendant Cohen

DAVID M. BRODSKY, ESQ.
Guggenheimer & Untermeyer
80 Pine Street
New York, N.Y. 10005
Attorney for Defendant Driesman

JUDGMENT (MILTON COHEN)

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK
- - - - - - - - - - - - - - - - - - - -
UNITED STATES OF AMERICA

v. No. 74 Cr. 447

MILTON COHEN
- - - - - - - - - - - - - - - - - - - -

On this 16th day of July 1974 came the attorney for the government and the defendant appeared in person and by Frederick H. Block, Esq.

It is adjudged that the defendant upon his plea of not guilty and a verdict of guilty by a jurg has been convicted of the offense of unlawfully, wilfully and knowingly combining, conspiring, confederating and agreeing, together with others, to commit certain offenses against the United States, to wit, violation of Title 15, U.S.C., Secs. 77q, 77j, 77x, Rule 256(e)(17 C.F.R. Sec. 230.256), 78(b) and 78(ff), and Title 18, U.S.C., Secs. 1341, 371 and 2, as charged and the court having asked the defendant whether he has anything to say why judgment should not be pronounced, and no sufficient cause to the contrary being shown or appearing to the Court,

IT IS ADJUDGED that the defendant is guilty as charged and convicted.

IT IS ADJUDGED that the defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of SIX (6) MONTHS on Count 1; SIX (6) MONTHS on each of counts 2, 3 and 4 which are to run concurrently with each other and with sentence imposed on count 1. Defendant continued on present bail until he posts bail pending appeal fixed in the amount of $25,000.00 P.R.B.

IT IS ORDERED that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and that the copy serve as the commitment of the defendant.

s/ Robert J. Ward
United States District Judge

s/ Raymond F. Burghardt,
Clerk

[FILED JULY 16m 1974]

JUDGMENT (BERNARD DEUTSCH)

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

v. No. 74 Cr. 447

BERNARD DEUTSCH

On this 12th day of July, 1974 came the attorney for the government and the defendant appeared in person and by Marvin E. Segal,Esq.

IT IS ADJUDGED that the defendant upon his plea of not guilty and a verdict of guilty by a jury has been convicted of the offense of unlawfully, wilfully and knowingly combining, conspiring, confederating and agreeing, together with others, to commit certain offenses against the United States, to wit, violation of Title 15, U.S.C., Secs. 77q, 77j, 77x, Rule 256(e) (17 C.F.R. Sec. 230.256), 77(b) and 78(ff), and Title 18, U.S.C., Secs. 1341, 371 and 2, as charged and the court having asked the defendant whether he has anything to say why judgment should not be pronounced, and no sufficient cause to the contrary being shown or appearing to the Court,

IT IS ADJUDGED that the defendant is guilty as charged and convicted.

IT IS ADJUDGED that the defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of THREE (3) YEARS on count 1: THREE (3) YEARS on each of counts 2, 3 and 4 which are to run concurrently with sentence imposed on count]. Defendant continued on present bail until he posts bail pending appeal fixed in the amount of $250,000.00 P.R.B. secured by 10% cash.

IT IS ORDERED that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and that the copy serve as the commitment of the defendant.

s/Robert J. Ward
United States District Judge

s/Raymond F. Burghardt
Clerk.

JUDGMENT (STANLEY DUBOFF)

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

v. No. 74 Cr. 447

STANLEY DUBOFF

On this 16th day of July, 1974 came the attorney for the government and the defendant appeared in person and by Morton S. Robson, Esq.

IT IS ADJUDGED that the defendant upon his plea of not guilty and a verdict of guilty by a jury has been convicted of the offense of unlawfully, wilfully and knowingly combining, conspiring, confederating and agreeing, together with others, to commit certain offenses against the United States, to wit, violation of Title 15, U.S.C., Secs. 77q, 77j, 77x, Rule 256(e) (17 C.F.R. Sec. 230.256), 77(b) and 78(ff), and Title 18, U.S.C., Secs. 1341, 371 and 2, as charged and the court having asked the defendant whether he has anything to say why judgment should not be pronounced, and no sufficient cause to the contrary being shown or appearing to the Court,

IT IS ADJUDGED that the defendant is guilty as charged and convicted.

IT IS ADJUDGED that the defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of THREE (3) YEARS on count 1; THREE (3) YEARS on each of counts 2, 3 and 4 which are to run concurrently with sentence imposed on count 1. Defendant continued on present bail until he posts bail pending appeal fixed in the amount of $100,000.00 P.R.B. co-signed by his wife / secured by 10% cash.

IT IS ORDERED that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and that the copy serve as the commitment of the defendant.

s/ Robert J. Ward
United States District Judge.

s/ Raymond F. Burghardt
Clerk

NOTICE OF APPEAL (COHEN)

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

- -

UNITED STATES OF AMERICA,

-against-

MILTON COHEN,

Defendant.

NOTICE OF APPEAL

74 CR 447, RJW

- -

S I R S :

PLEASE TAKE NOTICE that the defendant, MILTON COHEN, above named, hereby appeals to the United States Court of Appeals for the Second Circuit from the judgment of conviction and sentence entered herein on the 16th day of July, 1974, wherein and whereby a sentence of 6 months was imposed on Count I and concurrent sentences of 6 months were imposed on Counts II, III and IV.

Dated: New York, N.Y.
July 25, 1974

TO: CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF N.Y.
* * *

UNITED STATES ATTORNEY
SOUTHERN DISTRICT OF N.Y.
* * *

s/S. Edward Orenstein
S. EDWARD ORENSTEIN
Attorney for Deft., Milton Cohen
Office and P.O. Address
401 Broadway
New York, N.Y. 10013
Tel: (212) 925-1414

s/Frederick H. Block
FREDERICK H. BLOCK
Atty. for Deft., Milton Cohen
Office and P.O. Address
295 Madison Avenue
New York, N.Y. 10007
Tel: (212) 685-1161

NOTICE OF APPEAL DATED JULY 19, 1974 (DEUTSCH)

(SAME TITLE)

Notice is hereby given that BERNARD DEUTSCH, a defendant herein, hereby appeals to the United States Court of Appeals for the Second Circuit from a verdict of conviction on all counts of the indictment; and from a sentence which was entered July 12, 1974, of 3 years imprisonment on each count; said term to run concurrently.

Defendant is presently free on bail represented by a personal recognizance bond of $250,000., which is secured by cash in the amount of $25,000.

Dated: New York, New York
July 19, 1974

s/Bernard Deutsch
BERNARD DEUTSCH, pro se

163 Whitman Drive
Brooklyn, New York

TO: HONORABLE PAUL J. CURRAN
United States Attorney for the
Southern District of New York
United States Courthouse
Foley Square
New York, New York

NOTICE OF APPEAL DATED JULY 16, 1974 (DUBOFF)

(SAME TITLE)

Notice is hereby given that Stanley Duboff, defendant above named, hereby appeals to the United States Court of Appeals for the Second Circuit from the judgment of sentence and conviction of the Honorable Robert J. Ward entered in this action on the 16th day of July, 1974.

Dated: July 16, 1974
New York, New York

ZISSU LORE HALPER & ROBSON
Attorneys for Defendant
Stanley Duboff
450 Park Avenue
New York, N.Y. 10022
(212) 371-3900

*****

own brokerage firm, Jaffee & Co.

You will see during the case that the government will introduce, that Mr. Deutsch and Mr. Duboff tried to do a lot of things to keep their interest in the Richard's Packing stock somewhat concealed. The evidence will further show that the directing of trades by Mr. Deutsch and Mr. Duboff through Kelly, Andrews & Bradley and the scurrying around by Mr. Cohen and other people for franchises were all designed and intended to give the appearance of an exciting new company patterned along the lines of McDonald's, which was making the great progress and which showed a lot of activity in the stock market.

In any case, the real purpose and the real goal in all of this was to find a large investor or a number of investors eager to and willing to buy large amounts of Richard's Packing stock at high prices. And early in 1969 Deutsch went west in search of his target, the big investor. He went to Denver, Colorodo, where under one roof he found three large mutual funds. One of them, Financial Venture Fund had $45,000,000 in cash or thereabouts, to invest. This fund, Financial Venture Fund, was managed by a man named Jack Hurley. A man whose primary experience and primary background up until that

point had been in the computer business where he had been working for quite a number of years for International Business Machines, IBM. In fact, as of early 1969, Mr. Hurley, the evidence will show, the man who was responsible for managing the investments of Financial Venture Fund, had only a very limited and meager experience in the stock market and in the business of buying stocks for a mutual fund.

Mr. Deutsch, as I understand, went west to Denver, Colorodo, the evidence will show, in 1969, and he impressed Mr. Hurley. The evidence will show that Mr. HUrley was wined and dined by Mr. Deutsch in Las Vegas, given a couple of hot stock tips that panned out. And soon Mr. Hurley became very impressed by Mr. Bernard Deutsch and his firm, Wall Street brokerage firm called Jaffee & Co. MOreover, the evidence will show that Mr. Hurley bought a lot of Richard's Packing stock, not only for the reasons I have mentioned, but also for other reasons, because Mr. Cohen and Mr. Deutsch, the evidence will show, gave MR. Hurley and his fund, Financial Venture Fund, as well as the two other funds that I have mentioned in Denver, a lot of false and misleading information about Richard's Packing Stock and the company.

What was some of the false information that

the evidence will show? One was the fact that was told to Mr. Hurley's fund, Financial Venture Fund and the two other funds, that was Richard's Packing Company's earnings, the earning of the company for the twelve-month period ending June of 1970, was going to be very, very high indeed. Astronomical earning figures were being given out.

This was a company, you recall when I first mentioned it, that had been earning somewhere in the neighborhood of twenty centers per share. The evidence will show that Mr. Deutsch and Mr. Cohen, directly and indirectly supplied the mutual funds out in Denver, Colorado with information that for the twelve-month period ending June, 1970 Richard's Packing stock would be earning $2 a share and even more for its shares of stock. A company that had previously been earning twenty cents, the three mutual funds were told, would be earning $2 and more.

MR. BLOCK: If your Honor please, I don't like to interrupt, but I think we ought to approach the bench?

THE COURT: You are not going to interrupt, you are not going to approach the bench. We will proceed. I anticipate the government will prove everything they say that they intend to prove. If they do not, it can only be to their detriment.

You may proceed.

MR. BLOCK: But this isn't within the issues in the case.

MR. ROBSON: If your Honor please --

THE COURT: Please.

MR. ROBSON: I object to the comment that the government will prove. The proof of it will try to prove is the more appropriate comment.

THE COURT: If you would like to modify my comment, ladies and gentlemen, the government will try to prove. It is up to you to determine whether the government does or will prove its case. Let's get on with it.

MR. SCHATTEN: The evidence will show, ladies and gentlemen, that the company, Richard's Packing, never came even close to earning these figures in 1970. In fact, the evidence will show that the company, Richard's Packing Co., in 1970 earned around fifteen cents per share of stock.

The evidence will also show that for the period, the one year period ending June, 1971, the earning projections given to the three Denver funds were even higher, more rosy, and the evidence will aslo show that Richard's Packing not only didn't earn very small amounts in 1971, but indeed, suffered a loss.

This was one aspect of the false statements that were given to the mutual funds. You will hear more

*****

Richard's Packing stock in or about the spring of 1970.

Once the funds woke up to the true facts about what Richard's Packing was, the evidence will show, the bubble soon burst, and shortly thereafter the three mutual funds out in Denver, Colorado sold their shares, as I said before, they got mostly around $1 or so on those shares, and they wound up losing $5,000,000.

While the three mutual funds were losing these $5,000,000, let us look at the defendants and see how they fared. Mr. Deutsch and Mr. Duboff, the evidence will show, fared very well indeed. I mentioned before this 30% deal that they had worked out with Mr. Shwidock at Kelly, Andrews & Bradley. This is just the beginning. Very small peanuts, indeed, I submit the evidence will show.

You recall that I told you that Deutsch and Duboff were brokers with Jaffee & Co. They had an arrangement with Jaffee & Co. whereby they would make 40% of all the brokerage commissions on transactions that they had brought.

The evidence will show that the three mutual funds in Denver, Colorado that I have been telling you a lot about bought all of their Richard's Packing shares through this brokerage firm, Jaffee & Co., and Mr. Deutsch

Bradley thirty percent deal, the substantial commissions they were entitled to from Jaffee & Co., through their interests that they tried to keep hidden and secret in New Dimensions Securities Company, and this public offering, you will see that Mr. Deutsch and Mr. Duboff fared very well indeed, while the three mutual funds in Denver, Colorado and thousands of investors were losing $5,000,000.

Let's look at Mr. Cohen and see what happened to him. You will hear testimony that he participated in the misrepresentation in connection with the public offering in March of 1969 and you will hear about a lot of other misrepresentations that he participated in throughout this entire period. You will see that Mr. Cohen also fared very well because he was able to take quite a number of shares of his stock in Richard's Packing, stock that he owned, and sell his shares at very high prices indeed.

Now, that , in a nutshell, is what the government will prove at this trial. We will prove our case by calling live witnesses and putting in documents. It is fair to tell you that there will be a large number of documents in this case.

The government in order to prove its case, will have testimony on the witness stand witnesses who are participants in this scheme, this manipulation and

testimony of other witnesses, and there will be documents that will corroborate the government's case.

The proof in this case will come in somewhat piecemeal. However, as I said before, this will not be a difficult case to understand, it will be a very simple and easy case that you will find you will be able to understand quite easily.

The charges in this case are conspiracy, fraud and manipulation. At the conclusion of the trial, when all the evidence is in, the government will have the opportunity to address you once again and at that time my colleague, Mr. Feffer, will review the evidence with you and ask you on behalf of the United States government to return a verdict of guilty as to all three of these defendants on trial.

Thank you very much.

THE COURT: Thank you, Mr. Schatten.

MR. BLOCK: If your HOnor please, may we now have a side bar?

THE COURT: No, you may proceed with your opening statement. If you wish to send the Court a note on some subject, I will defer the opening statement until you have written the note. We will await counsel writing a note to the Court, ladies and gentlemen.

bmv 6

(Pause.)

MR. ORENSTEIN: Your Honor, will this note be made part of the record?

THE COURT: If you wish it to be done, it will be done.

MR. ORENSTEIN: We do , your Honor.

THE COURT: Mark the note as Court's Exhibit 1, for identification.

(Court's Exhibit 1, marked for identification.)

THE COURT: Show it to the government.

MR. SEGAL: Your Honor, I have a note here.

THE COURT: I thought you were all writing one note. If you each want to write a note, you may.

Mr. Segal's note will be Court's Exhibit 2 for identification.

(Court's Exhibit 2, marked.)

THE COURT: Show that to the government as well. May I have the information as well?

MR. FEFFER: Your Honor, the information is being typed this morning.

MR. BLOCK: Well, I have a draft of it, your Honor.

MR. FEFFER: We have a draft, your Honor.

(Document handed to the Court.)

THE COURT: Relative to Court's Exhibit 1 for identification, the note submitted by Mr. Block and Mr. Orenstein, the application is in all respects denied.

Relative to Mr. Segal's note, which is Court's Exhibit 2, for identification, that application is in all respects denied.

The notes shall be placed in the court record.

You may proceed, Counsel.

MR. BLOCK: May it please the Court, the Messrs. U. S. Attorneys, and co-defense counsel, ladies and gentlemen of the jury, my name is Frederick H. Block and together with Mr. Orenstein, sitting over there in the brown suit, we are representing the defendant Milton Cohen, the gentleman sitting here at the end of the table, with the blue tie.

I speak here only for the defendant Milton Cohen and while you are listening to the evidence here, I would appreciate it if you would think of Milton Cohen as a single individual responsible for what he himself has done and for what he has knowingly authorized.

In other words, Milton Cohen, the gentleman whom I represent, is a man, and the evidence will show this, of 52 years of age, a distinguished business man from St. Paul, in Minnesota, a business man for many years, never before involved with the law and is brought into court on these charges which he flatly denies any complicity in, flatly denies it.

As a matter of fact, I think as you listen to the evidence here you will see that this is a prosecution that has been grossly misconceived by the Government and that never should have been brought against Milton Cohen in the first place.

The Court has told you in some of its earlier

remarks that the defendant is clothed with the presumption of innocence. This means, very briefly, that we do not have to prove our innocence in this case; the Government's burden is to attempt to prove guilt beyond a reasonable doubt, and I submit to you, ladies and gentlemen, that you are not going to hear anything approaching that in the course of this case.

Now, what do we have here? We have Milton Cohen who had been in business for many years, in the meat business, in St. Paul, Minnesota. He started out early with members of his family, the business of Richard Packing started somewhere around 1961, and in 1968 the company went public. I imagine that is an expression that is familiar to you.

I am going to ask you to do this as you listen to this case --

THE COURT: I would like to ask the jury a question: How many of you do, in fact, know what it means for a company to go public? Would you raise your hands?

There are some members of the jury who do not, Mr. Block, and I think it would be helpful if you would explain it to them.

MR. BLOCK: Thank you very much, your Honor.

To come right down to what going public means: Ordinarily you have a corporation and I guess you are all familiar with people operating as corporations, and a little

candy store can be incorporated, and it is the XYZ Stationary Store, Incorporated, and it is what is called a closely held corporation, and some nominal stock, like maybe 100 shares, is divided among the principals in the company, and that is a very small example of a corporation.

Now, there are other corporations, and American history is full of them, where the principals in the corporation feel that the company has a real future and they authorize through their Board of Directors the issuance of stock to the public, and in such circumstances they are required to comply with the rules affecting the sale of securities to the public, and those rules, I might say parenthetically, are very complex, and if I may just show you this book, there are some 500 pages in this book which deal with the regulations effecting securities and books replete with decisions of the Court construing the various provisions dealing with the issuance of securities.

In any event, a company decides through its Board of Directors to issue its stock to the public, they comply with the laws, and a certain amount of stock is then retained by the management and the balance of the shares are sold to the public and the public pays money which is initially received by the corporation and then, later on, the stock can be publicly traded, either over the counter, which is for

*****

MR. BLOCK: Now let's talk a little bit about some other aspect of the case. Status Marketing was mentioned. You will hear about who the top official in Status Marketing was, a Mr. Ward, who I don't believe is any kin to our judge. And Mr. Ward had been a top official at McDonald's. In other words, he wasn't pulled out of the woodwork.

I want to say this: There have been instances of growth companies companies that I'm sure of if you may have heard about, like, for example, Xerox today, whose stock is up in the stratosphere someplace, started as a little company up in Rochester manufacturing something called the Healy coil. I think the Government misconceives this case because they are not aware that back in 1969, 1970 and '71, when the market, when the stock market was very active, it was going up all the time, in contrast to its sorry state today. And in those days, mutual funds were looking for companies with potential.

And I submit to you that the proof will show that there isn't any representation that Milton Cohen ever made with respect to Richard Packing Company or its prospects that was false in any way, shape or form. And that addresses itself to the -- what my adversary said that he was going to prove.

I just have a few general statements to make to you, and that is this: When you listen to the witnesses, and

its books and records. When you look at an automobile, you can see the motor, the seats, the outside of it, but there are some things you can't see in a car and some things you can't see in a business. You cannot see what is going on inside the cylinder of a car and cannot see what is going on every day with each salesman of a business going out and trying to sell a product.

So when you buy a car you may make a mistake or you may be defrauded. The man who sells you that car may honestly think it is a good car, he may honestly think it has 50,000 more miles on it, but he could be wrong. There are a lot of things he doesn't know, none of us know, about machinery.

When you buy stock in a business, the man who owns that business can sell you stock honestly mistaken as to the value of his business or on the basis of fraud. And this is where it is going to be at, to a large extent, in this case. We are talking about stock, an ownership in a company called Richard's Packing. Richard's Packing had certain assets, made certain money, and it had hopes, and when people buy an interest in a business, they buy largely hope.

When you open a store or any other business, you invest money in hope for the future. When a mutual

stocks went down, they made money. In some cases they may have been smart enough and in some cases they may not have been. But that is pretty immaterial. What is material is did they lie to anybody, misrepresent to anybody about the stock of Richard's and get somebody to buy stock so that these people would be defrauded? I tell you that the evidence will not establish that, not at all.

One last word, getting away from the evidence, you have heard several times that the defendants are presumed to be innocent. Those are words, but they are a lot more than words; they are the foundation on which this whole society is built, it is one respect in which we are different from almost any other society in the world. A defendant walks into this court completely clothed with that presumption. He is innocent, for all purposes, in your mind, until such time as you are absolutely convinced beyond a reasonable doubt and the judge will tell you what that means, that the Government has proved its case. Don't assume ever that the mere fact that these defendants are before you because an Assistant United States Attorney thought a charge should be brought against them that they have any obligation to convince you or that there is any fire because there is some smoke. This is not smoke; this is a charge which they are completely innocent of until you are satisfied beyond a reasonable doubt

*****

(In the courtroom in the presence of the jury.)

THE COURT: You may proceed.

MR. FEFFER: Your Honor, the Government calls --

THE COURT: Wait a minute. Mr. Robson has something.

MR. ROBSON: This was one item I wanted to hand up.

THE COURT: Just give it to Miss Kruger, and I will see it.

(Handing)

THE COURT: All right, Mr. Feffer.

MR. FEFFER: Your Honor, the Government calls as its first witness, Mr. Alvin Malmon.

THE COURT: Have you shown this to your colleagues, Mr. Robson?

MR. ROBSON: Yes, your Honor.

THE COURT: Very well.

A L V I N S. M A L M O N, called as a witness, having first been duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. FEFFER:

Q Mr. Malmon, what is your occupation?

A I am an attorney at law admitted to practice in the State of Minnesota. And I am also a certified public accountant, although I do not practice accounting.

Q Are you with a firm presently in Minneapolis?

A I would say about 25 years.

Q How do you know Mr. Cohen?

A He is married to -- was married to my first cousin.

Q Again I will direct your attention back to 1967. Did you know what business Mr. Cohen was engaged in at that time?

A Yes, sir, I did.

Q Can you tell the Court and jury what business that was?

A Amongst the management of his personal investments, he also, he was primarily engaged in a partnership with his brother Harvey B. Cohen, which manufactured meat patties and other items for distribution to supermarkets and drive-in restaurants.

Q In the early summer of 1967 did you have an occasion to meet with Milton Cohen in your office?

A Yes, sir.

Q What did he say to you and at that time what did you say to him?

MR. ROBSON: If your Honor pleases, on behalf of the defendant Stanley Duboff, I object to this testimony at this time on the ground that it does not involve the defendant.

MR. SEGAL: Your Honor, I make the same application.

THE COURT: At this time the substance of this

defendant Cohen withdraws that objection with reference to the privilege, and will allow the U.S. Attorney to proceed.

THE COURT: All right. Would you then, Mr. Malmon, to the best of your recollection describe this conversation that you had with Mr. Cohen? Tell us what you said and what he said, or the substance of what each of you said, to the best of your recollection.

THE WITNESS: Mr. Cohen stated to me that he was interested in incorporating, making a corporation out of Richard's Packing Company, the meat packing business, and having a public offering of Richard's Packing Company's stock.

He stated to me that he had from others that I had some experience in this field, and that he wanted me to be the attorney for Richard's Packing Company in handling the legal matters that were necessary in incorporating the corporation, and in preparing the necessary documents to allow the sale of Richard's Packing Company's stock to the public.

Q Pursuant to this conversation was Richard's Packing Company incorporated?

A Yes, Richard's Packing Company was incorporated as a Minnesota corporation, the exact date of which I

can't recall, but shortly thereafter.

Q Can you tell the Court and jury who the directors were at that time, of that company?

A The directors of the corporation as I can best recall, were Milton Cohen, Harvey D. Cohen --

Q Who is Harvey?

A Harvey D. Cohen is a brother of Milton Cohen. Their father, Joseph Cohen, a banker from St. Paul named Richard Stevenson, and myself, Alvin Malmon.

Q Following the incorporation of Richard's Packing did you prepare the necesary documentation to bring the company public?

A Yes, I did.

Q How did you do that?

A We filed an offering circular with the Securities and Exchange Commission's regional office in Chicago, Illinois, purporting to sell to the public 100,000 shares of Richard's Packing Company stock at $2.25 through an underwriter in Minneapolis, a brokerage house who specialized in local over-the-counter offerings, by the name of Englar & Budd Company.

Q Was that called a Regulation A offering?

A Yes, sir. Offerings that were $300,000 or less were subject to special rules and regulations of the

section called Regulation A.

Q Mr. Malmon, I am now going to direct your attention to some time during the late summer of 1968. Did you have occasion to speak about that time with Mr. Cohen again?

A Yes, sir, I did.

Q Where did this conversation take place?

A In my office.

Q What did Mr. Cohen say to you and what did you say to Mr. Cohen?

MR. ROBSON: If your Honor please, I think possibly we could try to have some sort of understanding. I don't want to jump at every point, but I'd like a continuing objection to any testimony from this witness with respect to conversation with Mr. Cohen.

THE COURT: I assume that Mr. Segal joins in that objection?

MR. SEGAL: Yes, your Honor.

THE COURT: This testimony is also being offered and received at this time subject to connection.

Q Go ahead, Mr. Malmon.

A Mr. Cohen stated to me that it was the intention of the company to change its direction; that instead of being merely a meat packing and processing business,

that it appeared to him to be good business sense to go into the fast food franchising business. He stated that while the concept was not fully developed, he anticipated that it would be an operation similar to McDonald's; not dissimilar from McDonald's.

He stated that the concept was being developed by a company called Status Marketing, Inc.; that Status Marketing, Inc., would develop the package, the franchising program, the logo, the style of the restaurant, the general idea; and when it was developed, Status Marketing, Inc. would help with the sale of franchises to prospective franchisees.

I asked him whether or not Richard's Packing Company was adequately financed for such a venture. He stated, as best I can recollect, that they would have to raise additional capital and that he had been in touch with me when the decision was made as to how that would be done, when the package was filled up.

Q Was there any discussion at this meeting as to how or who would raise the capital in question?

A Yes, there was.

Q What was that, Mr. Malmon?

A I had known for some time, although I had never met the gentleman, that a gentleman by the name of

*****

A The language is mine. The information was provided to me by Mr. Cohen.

Q On page 7 of the same offering circular, there is a section entitled "Application of Proceeds", under which there is a listing adding up to some $282,500. Who provided you with the information contained in the section entitled "Application of Proceeds" in the offering circular?

A Again, the arrangement and the language is mine, but the information was provided by Mr. Cohen.

Q On page 9 of the same offering circular there is reference to stocks openings and warrants. With respect to openings, I want to direct your attention back to September of 1968. Did you have an occasion to meet with Mr. Cohen?

A Yes.

Q During that time?

A Yes.

Q Where did this meeting take place?

A In my office.

Q Can you tell the Court and jury what Mr. Cohen said to you and what you said to him?

A Mr. Cohen handed me a list of names and numbers of shares and stated to me that he wanted me to prepare resolutions of the Board of Directors of Richard's Packing Company authorizing the issuance of stock openings to those

persons in the number of shares listed opposite their names, and at the prices listed opposite their name.

MR. SEGAL: Excuse me, your Honor. May we just have it taken by the Court that there is a continuing objection to any of this testimony based upon it subject to connection --

THE COURT: Let the record reflect that there is a continuing objection by Mr. Deutsch and Mr. Duboff to the substance of any conversations between the witness and Mr. Cohen. Should Mr. Deutsch join in the conversation, the same objection would then apply to Mr. Duboff. Should all three gentlemen be involved in a conversation with this witness, then of course there will be no objection at least on that ground. Is that satisfactory to you, gentlemen?

MR. SEGAL: Yes, your Honor.

THE COURT: Very well.

Q Mr. Halmon, can you tell the Court and jury what an option is, a stock option is?

A Well, a stock option is a right that you have that cannot be taken away from you, for a certain period of time to buy, let's say one share of stock at a price that is now set. You have a right in the future to buy a share of that stock, or ten shares or a thousand shares, depending on what the option agreement says, for a price that is now determined,

the price that is stated in the option document.

Q After you were provided with this list, what, if anything, did you say to Mr. Cohen?

A I asked Mr. Cohen, as a director myself, what services, what was the consideration for the granting of these stock options to these parties.

Q What did he say to you?

MR. SEGAL: Your Honor, I am going to object to this testimony. We feel that it might be important enough to come up to the side bar on this.

THE COURT: All right.

(At the side bar.)

MR. SEGAL: Your Honor, as a result of at least some of the information which is available to us, it is my belief that this witness is going to testify that Mr. Cohen said to him that these options were being given for past services and future services, including services connected with the sale of the 10,000 shares which is the subject at least in part of this indictment. That goes to the subject of the indictment, and it goes to the potential proof that the government need adduce in labeling Mr. Deutsch and Mr. Duboff as underwriters here, who have recieved undisclosed compensation.

Because it does strike really to an ultimate question of fact here, this is an admission or a statement that was made by Mr. Cohen. The introduction of this statement may very well so prejudice the rights of these defendants, Deutsch and Duboff, as to be the subject for a mistrial.

I don't want a mistrial, but if I have anticipated incorrectly, I don't think I have, I am delighted to have the government advise me otherwise. But if that is the case, and if that does come in, I will be forced to move for a mistrial, and we have all kinds of Bruton problems which will rise perhaps out of this kind of testimony.

MR. FEFFER: First of all, your Honor, Mr. Segal is not entirely correct. The statement from this witness is going to be that these options were issued for services in the past and services in the future, in general. That's number one.

Number two, the reason why we are introducing these options, the aspect of this option is because two people, Harry Morganstin and William Harris, got 10,000 shares of stock in option form of a price of 6, which is a very, very favorable option.

Our contention and we will prove at this trial that Morganstin and Harris are nominees for Mr. Deutsch and Mr. Duboff respectfully and that is one of the reasons why this is a vital piece of evidence to us, to show that they, from the very outset, were benefitting by the activity in the Richard's Packing stock and being amply rewarded by Mr. Cohen for it.

THE COURT: You put your objection on the record. I have heard from the government, and obviously we are moving now into what is a sensitive area of the case, to you. I would think that if the government does not establish a conspiracy, you would have a very good shot at a mistrial at the end of the government's case because I am certain that there will be other material which will

be coming in which will be of an equally powerful nature. I can visualize your fear; at the same time I'm sure the government wishes to proceed, knows the risks they are taking --

MR. FEFFER: Sure.

THE COURT: In the event they do not prove the conspiracy, and under the circumstances, making them very well aware of what their risk is, and noting that you have protected the record by a timely objection, I am going to overrule the objection. I think it is clear in the record and I will say it at the side bar but if you want me to say it in front of the jury, this is being received against your client, Mr. Segal, and yourself, Mr. Robson, subject to connection.

That objection, of course, has been made and is preserved. I recognize you feel that it is getting close to very, very serious matters, and under the circumstances I would suggest that I will overrule your objection and note for the record that it is admitted subject to connection.

If you want me to tell thejury specifically again, I will do so. But I will leave that to both of you gentlemen, and we will proceed.

MR. ROBSON: I just want to note that I join

in the objection.

THE COURT: I assumed that you did, and the same ruling of course applies to Mr. Duboff and Mr. Robson.

MR. PEFFER: I fail to see any type of Bruton problem.

THE COURT: Let's get to the Bruton problem at some further stage. That probably Mr. Segal sees down the road.

MR. SEGAL: My objection stands. I don't have anything more to contribute to the record than that.

(End of side bar.)

THE COURT: Ladies and gentlemen, the response to the question which you wil. be hearing is offered against all three of the defendant. It is being received at this time relative to the defendants Deutsch and Duboff subject to connection.

Q Mr. Malmon, after you received this literature what if anything did you say to Mr. Cohen?

A I asked Mr. Cohen what was the consideration for the granting of the options to these persons on the list.

Q What did he say to you?

A He said that these options were granted for services rendered to the corporation and to be rendered

to the corporation, of a financial nature and in connection with the establishment of the company's franchise restaurant program by these people.

Q Was there any conversation relative to the prices of the option?

A Yes. I asked him why some of the options were at 15 and some other options were at 5 or 6, or whatever the price was.

Q What did he say to you?

A He said to me that is because of the nature of the services rendered. The services rendered by those people at a lesser price were more valuable services to the company.

Q Mr. Malmon, I want to show you what has been marked as Government's Exhibit 6 for identification, and I ask you to look at it and Identify it.

A Yes, sir.

Q Can you identify that, Mr. Malmon?

A Yes, I can.

Q Please tell the Court and jury what Government's Exhibit 6 is.

A It is minutes of a special meeting of the board of directors of Richard's Packing Company authorizing the issuance of certain stock options in accordance with

Mr. Cohen's instructions to me, and our conversation with respect to the same.

MR. FEFFER: The government offers Exhibit 6 for identification.

MR. BLOCK: No objection.

MR. SEGAL: May we have a brief voir dire, your Honor?

THE COURT: Ladies and gentlemen, I think this is the first "voir dire" we have had with a witness. In the normal course of events, the defense counsel waits until the direct examination is finished and then, as you have seen on television, I'm sure, conducts his cross examination.

However, when exhibits are offered in evidence, before a final determination is made on whether they are going to go into evidence or not, counsel is permitted a very brief examination, and that is what is called a voir dire examination, that is, the examination Mr. Segal just asked for, and I think from time to time, ladies and gentlemen, you will see one or another counsel for any of the parties asking for this type of examination, and it is customarily given to counsel, so that you will find there is an occasional time when the other side will get up during the course of a direct examination or a cross examination.

You may proceed.

VOIR DIRE EXAMINATION

BY MR. SEGAL:

Q Mr. Malmon, I take it that you were present at the time that this special meeting of the board of directors of Richards Packing was held?

A No, sir, there was never any special meeting.

Q Can you tell us who it was how composed these minutes?

A I did, sir.

Q Did you compose those minutes as a result of any notes you took?

A No, sir.

Q Did you compose those minutes, then, as a result of any meeting that was actually held?

A No, sir, there never was any meeting of the board of directors with respect to this.

MR. SEGAL: I object to this document going in. There has certainly been no foundation for it.

THE COURT: Mr. Malmon, this purports to reflect something which occurred on September 10, 1968. On that date were you a director of Richard's Packing Company?

THE WITNESS: Yes, sir, I was.

THE COURT: Am I correct that you indicated in response to one of counsel's questions that it was you who prepared this particular document?

THE WITNESS: That's right, your Honor, correct.

THE COURT: The objection is overruled. The

document will be received.

However, it will be received subject to connection relative to the Messrs. Deutsch and Duboff.

(Government's Exhibit 6 for identification, received in evidence.)

DIRECT EXAMINATION RESUMED

BY MR. FEFFER:

Q Mr. Malmon, were the options referred to in the board of directors resolutions issued?

A Yes, sir.

Q I will make brief reference to two of the names that appear on the resolution: Harry Morganstin, number of sahres, 5,000, option price, $6. Beneath that, William Harris, 5,000 shares, same option price, $6.

MR. SEGAL: Your Honor, I would request that this entire document be read, rather than that. Either that, or the document speaks for itself.

MR. FEFFER: I make reference to the two names for a question, your Honor. I have no objection to reading the entire thing.

THE COURT: I would suggest when your turn comes --

MR. SEGAL: I'm sorry, your Honor, I withdraw that. I thought counsel was merely reading those two.

Q Do you know what services Mr. Morganstin and Mr. Harris provided for Richard's Packing Company?

A No, sir. I have never heard those names before or since.

Q Did you receive a letter approximately a year later in connection with the options that were granted at that time?

A Yes.

Q I show you what has been marked Government's Exhibit 7 for identification (handing).

A Yes, I recognize this.

THE COURT: Do we have a copy of the information yet?

MR. SCHATTEN: Yes, your Honor, we do.

MR. FEFFER: May I pass Government's Exhibit 6 to the jury?

THE COURT: It is in evidence. You may.

MR. BLOCK: If your Honor please, if Ehxibit 6 for identification is being offered -- or 7 --

THE COURT: I think he asked to pass 6 to the jury and I imagine we are coming up with an offer very soon on 7.

MR. BLOCK: If there is such an offer, then there is no objection on the part of Mr. Cohen.

MR. BLOCK: No objection by defendant Cohen.

Q Let me ask you one question with respect to the two letters that are attached to the letter to you, which is the first letter.

There is some handwriting on those letters. Is that your handwriting?

A Yes. The handwriting is mine.

Q Except for the signature, that is?

A That's right, the ink handwriting on the carbon is mine.

THE COURT: That appears to be some calculation?

THE WITNESS: Yes.

THE COURT: That's yours?

THE WITNESS: That's correct.

THE COURT: I understand there is no objection from Mr. Block on behalf of Mr. Cohen. Mr. Segal and Mr. Robson?

MR. SEGAL: Your Honor, voir dire, please?

THE COURT: Of course.

VOIR DIRE EXAMINATION

BY MR. SEGAL:

Q Mr. Malmon, you have Exhibit 8 in front of you?

A No, I don't.

Q I hand you Exhibit 8 for identification and call your attention to the last two letters in that exhibit.

A Yes, sir.

Q Did you write these letters?

A No, I did not.

Q That is, you wrote neither the last document in this set, in Exhibit 8, nor the next to the last document?

A I did not write them, that's correct.

Q Did you draft those for anybody's signature?

A No, sir, I did not.

MR. SEGAL: Your Honor, I would object to this witness introducing this document. It would appear there is no foundation made. They were neither drafted by or shown to either Mr. Deutsch or Mr. Duboff, and I would indicate that this witness doesn't even enjoy a status except as a witness which would make his receipt of such a document admissible through him.

I would object on that basis.

MR. FEFFER: I have one question that might clarify it, your Honor.

BY MR. FEFFER:

Q Are you able to identify the signature of

*****

THE COURT: The document is received without objection as to Mr. Cohen and, for the moment, I will sustain the objection of counsel. They may want to rethink the matter because it may be necessary for you to bring another witness.

MR. FEFFER: I might be able to develop that, your Honor, if I can.

THE COURT: At the moment, I am sustaining the other objection and it doesn't have to do with the subject of connection. I think you know what it is, and if you want to develop something further, you may do so.

MR. FEFFER: Would you like me to withhold the offer, your Honor?

THE COURT: I would suggest if counsel wish to continue their objection, you should withhold your offer. If you have someone from the addressee who is available to you and you want to make an offer at the side bar, counsel may wish to hear you on that.

MR. FEFFER: Yes, your Honor.

(At the side bar.)

MR. FEFFER: Your Honor, I can call someone from Northwestern State Bank to come on the stand and testify they received this letter. If counsel wants me to do that, I can do it. In the hope of shortening this trial, I hope we can reach agreement.

MR. SEGAL: I certainly think I have a valid objection on it, your Honor --

THE COURT: You heard my ruling, up to now, and I sustained you.

MR. SEGAL: This is being introduced for the truth of the matter asserted to and I think where we have perhaps double-barreled objections I am concerned about conceding anything where this is going to be in evidence against my man and it is certainly part of the gravamen of the charges here that this is part of the compensation.

MR. FEFFER: It is being offered as an admission of a defendant, your Honor, Milton Cohen.

THE COURT: I recognize that, and it is received against Mr. Cohen. Mr. Block quite properly has not objected. I think at this stage if the other defendant's counsel persists in their objection, I must continue to sustain the objection.

Now, I called you to the side bar because I have learned through my experience, anyway, that if I have to press the Government they will certainly produce somebody from a Minnesota bank and the document takes on even more significance than it would if it kind of drifted in at this point. I sustained your objection. It is well taken. It is just a question of whether you wish to persist in it and that, of course, is up to you and to Mr. Robson.

MR. SEGAL: We will have to wait for a while, your Honor. Let me think about this situation further.

MR. ROBSON: Your Honor, I have no real objection.

THE COURT: In essence, you are going along with his objection at this point?

MR. ROBSON: Yes, your Honor.

THE COURT: Sometimes I can build up the significance of a document even more by having a fellow step on the stand just for that purpose.

MR. SEGAL: I have, your Honor.

THE COURT: We both have. I do not want you to concede your case. I have sustained you and that is the state of the record at the moment.

(In open court.)

MR. FEFFER: Your Honor, I will withdraw the offer of this document until some future time.

THE COURT: Very well.

BY MR. FEFFER:

Q Mr. Malmon, I direct your attention to sometime in April of 1969, after completion of the offering. Did you have an occasion at that time to have a telephone conference with Mr. Deutsch and Mr. Cohen?

A My recollection is yes, I did.

Q Where did that take place?

A In my office, again.

Q Who was present in your office?

A Mr. Cohen, Mr. Deutsch was on the long distance telephone.

Q To who?

A Mr. Deutsch.

Q Will you tell the Court and jury what Mr. Deutsch said to you during the course of this conversation?

MR. ROBSON: Could we have the time fixed, your Honor? All I know it was sometime after April --

MR. FEFFER: No, in April.

THE COURT: Perhaps if the witness can specify the date with greater exactitude, it would be helpful. Do you recall the exact date or the approximate date of this telephone conversation, three ways, as you have indicated, with Mr. Deutsch, Mr. Cohen and yourself?

THE WITNESS: Your Honor, there is correspondence in my file that I think would give me that exact date, but at the moment, 1969 is an awful long time ago and I cannot remember the exact date. I think it was sometime after the middle of April, April 15th or 19th, or somewhere along that time. I don't recall the exact date.

THE COURT: You think it was in the middle of the month of April?

THE WITNESS: Yes. It was April 1969 but I don't know the exact date without reference to my files.

Q Could you tell the Court and jury what Mr. Deutsch said to you during this conversation?

A He said that the amount of stock -- he said this, that it would be to the best interests of the shareholders of Richard's Packing Company and to the company that there would be more stock outstanding in the float and, therefore, he suggested that it might be a good idea for Richard's Packing Company to have a stock dividend, a stock dividend being a distribution of additional shares of stock based upon the number of shares that each person already owns.

Q I show you Government's Exhibit 10 for identification and ask you to look at it and to identify it, if you can.

A These are minutes of a special meeting of the Board of Directors of Richard's Packing Company, purported to take place on April 19, 1969, wherein the Board authorized two successive 25 percent stock dividends.

Q Upon whose direction did you prepare these minutes?

A Mr. Cohen.

MR. FEFFER: Your Honor, the Government offers 10 for identification.

MR. BLOCK: No objection on the part of the defendant Cohen.

during that time?

A No, sir.

Q To the best of your knowledge, did Richard's Packing Company have any shareholders' meetings during that period of time?

A No, sir.

MR. BLOCK: I am going to object to that, if your Honor please. Could we approach the side bar?

THE COURT: It has been asked and answered.

MR. BLOCK: I move to strike it out as being totally irrelevant to the charges in this case.

THE COURT: The jury has heard it now and I am going to let it stand.

Q I am going to show you Government's Exhibit 13A, Government's Exhibit 13B and Government's Exhibit 13C for identification. Can you identify these three exhibits?

A Yes, I can. Exhibit 13A is a copy of the annual report of Richard's Packing Company for the fiscal year ended June 30, 1969. 13B is a copy of the annual report of Richard's Packing Company for the fiscal year ended June 30, 1960. Exhibit 13C is a copy of the annual report of Richard's Packing Company, or a photostatic copy, anyway, for the fiscal year ended June 30, 1971.

MR. FEFFER: Your Honor, the Government offers these

projections, annual reports, number of franchises. Where am I going to get this information?

MR. FEFFER: The annual reports are legitimate, but it is the representations that were being made before they issued that report and told the truth that is the very essence of the charge here, that representations were made to induce people to buy Richard's Packing stock and there were false earnings projections, misrepresentations as to the franchising of restaurants. They claimed to have 210 licensees signed up and this annual report for 1969 says they had five or six.

MR. ROBSON: There is not one word of reference to that in this indictment.

MR. FEFFER: I said those were among the misrepresentations made to induce people to buy stock as contained in the indictment.

MR. ROBSON: But the essence is not referred to in the indictment and now we are given misrepresentations that are not the essence in the indictment, but he wants to put this in for the first time today, and I don't know yet what the misrepresentations are.

MR. BLOCK: Your Honor, I think the time has come for the break and perhaps we could go into the robing room on this. I think this is crucial in this case.

has left the courtroom.

MR. FEFFER: In response to one thing said at the side bar, your Honor, that we refused to reveal particulars and allow discovery for proper preparation: I might say within the documentation we provided and within the lists, within the documents that were to be introduced in evidence at this trial, were included various press releases which contained therein information referring to 210 franchises, 100 franchises, Dune Buggies, all types of things, which clearly showed to defense counsel exactly where we were going to go in terms of the very exhibits we intended to offer at trial. I don't think it is fair to say this is all a great, grand surprise, because the very documents themselves contain the essence of what we are trying to show here.

THE COURT: Let me work backward for a moment, if I can. I have some difficulty, in view of what the witness just indicated to me, relating to the admissibility of the 1970 and 1971 annual reports. I have looked over the information and it alleges a conspiracy which, as I read it, reading paragraph 6 of count 1, "from on or about July 1968 to on or about July 1970, in the Southern District of New York," certain things occurred. Looking for a final date in both the conspiracy count and the substantive counts, I fail to note any date which was more recent in point of time than

meetings?

MR. BLOCK: I object to that, if your Honor please.

THE COURT: Let's find what the answer is, first, with a yes or no, and then I will think through your objection.

A Yes, I had conversations with Mr. Cohen.

THE COURT: Before we get to the next, since we now know there is a yes answer, do you wish to be heard?

MR. BLOCK: Yes.

(At the side bar.)

MR. BLOCK: I raise the question of what is the possible relevance of the failure to hold stockholder's meetings? There is no charge in the indictment with respect to that. Where does that tie into anything involved in this case?

THE COURT: Well, to a certain extent, I suppose, for better or for worse, Mr. Segal opened the door when he talked about directors' meetings. You and I know --

MR. SEGAL: No, your Honor, I was not talking about directors; meetings at Richard's Packing, but directors' meetings of the funds.

THE COURT: No, no. I recall questions, and maybe I am in error on this, being asked on a voir dire by Mr. Segal --

only since the incorporation of Richard Packing Company in 1967.

Q And have you acted in any other matters for him prior to that time?

A No, sir, I had not.

Q You had innumerable conversations with Mr. Cohen from 1967 on for several years, isn't that correct?

A I would say that's correct.

Q And you came to know him very well as a result of this association, isn't that correct?

A I would say I know him very well from that association and prior to that, from personal knowledge.

Q On a personal basis?

A That's right.

Q Would it be fair to say that Mr. Cohen was a very hard-working man?

A One of the hardest working men I ever knew.

Q Would it be fair to say that Mr. Cohen is a very sincere individual?

MR. FEFFER: Objection, your Honor.

THE COURT: Sustained.

Q Is Mr. Cohen favorably regarded in St. Paul at the present time?

MR. FEFFER: Objection, your Honor.

THE COURT: Yes, sustained as to form.

Q Do you know Mr. Cohen's reputation in St. Paul?

MR. FEFFER: Objection, your Honor.

THE COURT: If it's beyond the scope of the direct, is that it?

MR. FEFFER: Yes, your Honor.

THE COURT: I will overrule it.

A Yes, I do.

Q Would it be fair to say that Mr. Cohen's reputation in St. Paul as a business man is beyond reproach?

A I would say generally that is correct.

Q How old are you, sir?

A I am forty-four years old.

Q Do you know how old Mr. Cohen is?

A I think he is about fifty. I don't know exactly, but I would say about fifty.

Q Mr. Malmon, in connection with this case you have conferred on a number of cases, have you not, with agents or people connected with the Securities and Exchange Commission and with the United States Attorney's office?

A That is correct.

Q And you have discussed this case with them on those occasions, isn't that correct?

A Yes, sir.

Q And that was in preparation for testimony here today, is that correct?

A I would say generally speaking that's correct.

Q As a matter of fact, you were called and testified before the grand jury in this case, isn't that correct?

A That is correct, sir.

THE COURT: Let me stop there just a moment, Mr. Block. I think it would be appropriate at this point for me to instruct the jury generally on the role of the grand jury. I don't like to interrupt your inquiry --

MR. BLOCK: I appreciate it. I was going to ask your Honor to do that.

THE COURT: I thought you might, and therefore I will do it now.

You heard at this point in the testimony the first mention of the grand jury. A grand jury is made up of twenty-three citizens who investigate possible violations of law. The grand jury conducts its inquiries under the legal guidance of the United States Attorney, specifically represented in normal course by an Assistant United States Attorney.

The grand jury has subpoena powers, it hears witnesses, it examines exhibits. However, defendants are not represented by counsel before the grand jury, so that

these witnesses who appear are not cross-examined by defense counsel as they are here in Court; nor do defense counsel have the opportunity to examine, as you have seen them examine here, and to review exhibits.

In any event, after hearing the stories presented by the witnesses and examining those exhibits which the United States Attorney presents, if the grand jury believes that there is what is called a prima facie case, they believe that there is reason to go forward, they vote to file a charge. That charge has been referred to on occasion, perhaps here, and you have heard it elsewhere, as an indictment.

An indictment is a formal document which the Government uses to commence its charge against the defendants and upon which it brings its case into Court. The indictment, as with the information which we are working with here, serves no other trial purpose whatsoever. It serves only to inform a defendant of the crime with which he is charged. The indictment, if it is returned by a grand jury, or the information, if it's filed by the United States Attorney, is not evidence against the accused, and affords no inference of guilt.

As I told you earlier, there is a presumption of innocence which rests with all defendants, and the

2 rmch ***** Malmon-cross

yesterday with Mr. Cohen, didn't you tell Mr. Cohen, explain the law of Minnesota to him in the same way, substantially, as you just told it to us?

A Absolutely.

Q You didn't formally demand a stockholders meeting?

A No, sir.

Q So that there was nothing illegal or improper or underhanded or chicanery or skulduggery in any way, shape or form, about not holding a stockholders meeting; right?

MR. FEFFER: Objection, your Honor.

THE COURT: Sustained as to form.

Q Nothing wrong with not holding a stockholders meeting?

MR. FEFFER: Objection. Asked and answered.

THE COURT: Since it has been, I think we will move it along by letting him answer again. I think it has been covered.

A There is nothing legally wrong with it.

Q Speaking about legally wrong, on the basis of your close association with Mr.Cohen, isn't it true that Mr. Cohen was always asking you whether some course of action for Richard Packing Company or its subsidiaries was legally okay?

A Yes, he was.

Company.

Q And the minutes that are in there and, at least, you prepared them?

A Yes, it would appear that up to the very last minutes, at least of those that are -- yes, it would appear I prepared all the minutes that are in this book.

Q In connection with the reference to the minutes of the meeting of the board of directors on August 15, 1967, are those minutes in there and do they indicate there was a form of option agreement adopted at that time?

A There is a resolution with respect to the adoption of an option agreement --

Q That is all I wanted to know.

A Yes.

Q All right. That clears up that point on this letter.

Now, let me ask you a couple of questions. Didn't the options that were granted at the directors meeting, the minutes of Exhibit 6 -- they involved the right to buy restricted shares, isn't that correct?

A That is correct.

Q And doesn't that relate to what we discussed earlier in connection with Exhibit A -- do you have it there, on your left --

A Yes.

Q And that relates, does it not, to a passage in the original offering circular, Exhibit A, the one when the company went public, where it says, under "Stock Options and Warrants," and I will read, in part --

MR. BLOCK: Any problem?

MR. FEFFER: I am wondering if this question is based on the document that is not in evidence yet. If it is, I think it should be offered in evidence.

THE COURT: Let's hear the full question. Perhaps you can begin again, Mr. Block, if you would.

MR. BLOCK: I lost my train of thought.

THE COURT: Mr. Reporter, please read the last question up to the point where it was interrupted.

(Record read.)

Q "The Company has reserved 75,000 shares of common stock for issuance pursuant to a plan adopted by the board of directors to grant stock options to key employees of the company and warrants to the underwriter and attorneys for the Company. No employee stock options have been issued to date. The options, when granted, have been designed to qualify as qualified stock options under the Internal Revenue Code."

In other words, these options were based on what

was contemplated under this passage from the first Reg A offering circular; is that correct?

A They are options that were issued in accordance with the reservation of 75,000 shares as set forth in the original offering circular, that is correct.

Q Right. And those shares, as we have said, are restricted shares which were substantially less in value than the publicly traded shares, right?

MR. FEFFER Objection, your Honor.

THE COURT: Sustained.

MR. BLOCK: That is what he testified.

Q Didn't you testify to that, sir?

THE COURT: Please, put another question to the witness in proper form.

Q Didn't you testify earlier, sir, that restricted shares were substantially less than registered shares?

A Yes.

Q Would it be fair to say that these options were substantially worthless?

THE COURT: When?

Q As of the time they were given.

A I would say the options at $15 were substantially owrthless, in my opinion. The options at $6 had some value.

Q Well, how much value?

MR. FEFFER: Your Honor --

A Not a lot.

Q What?

THE COURT: Not a lot. He's answered the question.

MR. FEFFER: Your HOnor, I didn't hear the timing.

Q Almost six years ago; right?

THE COURT: Let's make it five and a half. How is that?

A That's correct.

Q Mr. Malmon, were you asked these questions about that conversation thatyou say you had with Mr. Cohen when you testified before the grand jury, and the date was June 8, 1973, and I am going to read you certain questions and answers, and may I ask you, when you went before the grand jury, were you sworn to tell the truth there?

A Yes, sir, I was.

Q And when you were before the grand jury, you attempted to tell the truth, did you not, to the best of your recollection at that time; is that correct?

MR. FEFFER: Objection, your Honor.

THE COURT: Overruled.

A Yes, I did.

Q I am reading now from Page RSK 6 of 3508:

"Q Did Mr. Cohen tell you that these, all of the individuals named, had rendered services for the company and therefore were receiving options in return?

"A Yes.

"Q Did he specify what services had been performed by each individual?

Q That is the gentelman who had been sitting in the front row there?

A Yes, he is an SEC lawyer.

Q Yes, I think he's been identified. Did Mr. Walker talk to you at all about the Status Marketing agreement; in other words, the document we talked about that accompanied the 1A; or don't you remember?

A I think we may have picked it out as being one of the items that he wished to have a photocopy made of, but we didn't go over it and discuss it in any --

Q Did he ask you about the facts, any facts leading up to the Status Marketing agreement, the background or what happened?

A I think he may have asked me what Status Marketing's role was in Richard Packing Company's activities.

Q I see. As a result. Did you tell Mr. Walker that you had not seen the agreement between Richard Packing and Status Marketing?

A (No response.)

Q Yes or no, sir.

A I think that I said that I had no hand in preparing it. That's what I said.

Q I would like to show you 3510 for identification

and ask you to look at what has been marked here in pencil, and see if that refreshes your recollection as to what you told Mr. Walker about having seen the Status Marketing agreement.

MR. FEFFER: Your Honor, at this point I would ask that a representation be made as to where that 3510 came from.

MR. BLOCK: Oh, nonsense. That is improper.

THE COURT: Let me suggest this:

Ladies and gentlemen of the jury, the government is obligated under Federal law to turn over to defense counsel a variety of materials; that is a requirement.

It includes prior grand jury testimony of a witness and notes. You can draw your own conclusions from there. But this is part of your system of justice, and our system of due process of law. You may proceed, Mr. Block.

MR. BLOCK: Would you read the question back, Mr. Reporter --

THE COURT: Does that document refresh your recollection at all relative to a conversation you had with Mr. Walker concerning this Status Marketing agreement?

THE WITNESS: Yes.

A Yes, that's correct.

Q That's what it means by "at the market"?

A Yes.

Q No specified price?

A It is an unknown price.

Q By the way, there was no underwriter in connection with Richard Packing Company's second Reg A?

A There was no underwriter, with no underwriting agreement.

Q And there is a column, and this is on the cover page, "Maximum dealer concession per share, $1," right?

A Correct.

Q This is on the per share basis:

The proceeds to the market per share was net at market?

A That's correct.

Q Then on the basis of the total, the offering price to the public was $300,000?

A Maximum.

Q Maximum?

A Maximum.

Q And that was pursuant to the regulations of the SEC, isn't that correct?

A That's correct.

Q And you told us before that the $290,000 was a maximum, and the expenses of the company, did they involve legal expenses and printing expenses and that kind of thing?

A Yes, that kind of expense.

Q And then on Page 9, is it not correct that the stock options that we have been talking about pursuant to Exhibit 6, that resolution, were -- the stock option situation was summarized on Page 9 of the offering circular?

A That is correct.

Q And this was something that you prepared?

A Yes, I prepared it from the information which I had at my disposal, the stock option agreements, the minute book, and I keep a stock option summary.

Q Right.

A That's correct.

Q And you felt that this was a sufficient -- you felt that this was a sufficient disclosure of the facts as you knew them from the records of the company; is that correct?

A Yes, sir.

Q And then we have on Page 10, which is the last page except for the balance sheets and unaudited statements earnings, and balance sheet, we have the following with

Q As of March 11th?

A That's right.

Q But did there come a time when you learned of any participating securities dealers within the meaning of your language? It's your language, isn't it?

A It's my language.

Q Did you learn of any participating securities dealers any time after March 11, 1969?

A As such, no.

Q That is an answer.

A The answer is no.

Q Does this mean, this dollar is the maximum dealer concession? What is intended by that?

A It's a form of brokerage commission.

Q What does it mean?

A It means --

Q In connection with this very offering.

A Well, as opposed to an underwriting discount or commission, acting as underwriters, a dealer's concession is a little -- it's a smaller type of brokerage fee. It isn't as big --

THE COURT: Perhaps you can tell the jury what is meant by a dealer. What sort of a person do you mean when you say "dealer"?

THE WITNESS: Well, a broker who participates in selling the stock on a limited basis without being the principal person who is in fact selling the stock.

Q As distinguished from an underwriter?

A As distinguished from an underwriter, who is responsible for the disposition of the whole offering and might use other dealers to help him, they would be dealers, and he would give them a dealer's concession.

If the company has no underwriter and the company uses these other brokers to a limited extent to distribute the offering, it is in fact the underwriter of its own offering and is paying a dealer's concession as opposed to a major underwriter paying a dealer's concession. It's not altogether uncomplicated.

Q When you use the word "dealer concession," what you are really saying is paying the dealer under the circumstances you have described for his help in distributing the issue and the maximum that he can receive is a dollar a share?

A That's correct, sir.

Q That is what was contemplated by that language?

A That is correct.

Q I don't think there has been any mention of this, but during the course of your representation of Richard

Packing Company, did you learn that there was a talk by Mr. Cohen of a private placement with Value Line Investment Company?

A Yes.

Q When did you hear about Value Line's interest for the first time? Can you recall that? Or is there something that the United States Attorney can furnish you from your file which would enable you to refresh your recollection?

A To the best of my recollection, I did not know about it at the time the offering became effective on March 11, 1969.

Q All right.

It is correct, is it not, that in May of 1969 Richard Packing Company concluded a transaction with Value Line; isn't that right?

A That is correct.

Q And that is from March to May, that is about three months?

A That's correct.

Q Is that right?

A That's right.

Q Is it correct that as a result of that transaction Richard Packing Company placed 50,000 shares of its restricted stock -- restricted stock -- with Value Line at

a price of $28 a share for a total payment to Richard Packing Company of $1,400,000?

A That is correct, sir.

MR. BLOCK: Do you have that check,Mr. Feffer?

MR. FEFFER: The original check?

THE COURT: Gentlemen, please do not communicate directly with each other.

MR. FEFFER: I'm sorry.

THE COURT: If you have a request, please make it to the Court, address all questions to the Court.

MR. BLOCK: I'm sorry, your Honor.

May the United STates Attorney be asked if he has that check or a photostat of the check, so we can fix a date, et cetera?

THE COURT: Do you have this check that counsel is requesting, which would have been from Value Line to Richard Packing?

MR. FEFFER: We have asked for the original and it is being sent to us.

THE COURT: But you don't have it here now?

MR. FEFFER: I believe that we may have a copy of that check.

THE COURT: If you have it handy or if any of the other counsel have it handy --

MR. FEFFER: I believe counsel have a copy of it. I don't have my copy here, your Honor.

MR. BLOCK: I can't find my copy, your Honor.

THE COURT: Do any other counsel have it?

MR. BLOCK: A $1,400,000 check shouldn't disappear so easily.

THE COURT: Once it's cancelled, I don't believe it's worth any more than any other paper.

He is aware of the transaction and he is aware that there apparently was a placement of 50,000 shares of restricted stock at $28 a share.

Is that right?

THE WITNESS: That is right, your Honor.

MR. FEFFER: The original will be here and I will furnish it to defense counsel when it comes.

THE COURT: Very well. Thank you.

Q Had you ever heard of Value Line?

A Yes, I am one of their mutual fund shareholders, for my children, as custodian for my children.

Q In other words, that is a mutual fund; is that correct?

A Yes, sir.

Q And you say you are sure you did not know anything about the negotiations in connection with that as of before

March 11th of 1969?

A No, sir.

Q Is that correct?

A I did not.

MR. FEFFER: Your Honor, I'm not clear as to the answer, whether he said he was sure when he said, "I did not."

THE COURT: I understood quite clearly, but I will ask him:

Did you know anything about this proposed Value Line transaction on March 11, 1969?

THE WITNESS: To the best of my recollection, your Honor, I did not.

MR. BLOCK: Would you mark this, please?

THE COURT: That would be E for identification.

(Defendant Cohen's Exhibit E was marked for identification.)

Q Is this the letter you received, Mr. Malmon -- I mean a letter that you wrote,a copy of a letter that you wrote?

A Yes, it is.

MR. BLOCK: I offer it in evidence.

May I show it to defense counsel first and then to the Government?

THE COURT: You can do it either way.

(Pause.)

MR. FEFFER: No objection, your Honor.

THE COURT: Received.

(Defendant Cohen's Exhibit 6 for identification was received in evidence.)

MR. BLOCK: May I read it to the jury, please, your Honor?

THE COURT: You may.

MR. BLOCK: On a copy of a letter that Mr. Malmon says he wrote, dated March 4, 1969, addressed to Mr. Leo Silverstein, Attorney-at-law, 230 Park Avenue, New York, New York.

(Mr. Block read to the jury from Defendant Cohen's Exhibit E in evidence.)

Q Mr. Malmon, Mr. Leo Silverstein is a lawyer in New York. Is he with Borden & Ball?

A Yes, sir.

Q What was his connection with Richard Packing Company at that time?

A At that time he had no connection with Richard Baking Company, but he was involved in the proposed offering which was going on simultaneously for Richard Franchise Investment, Inc., a wholly-owned subsidiary of Richard

Packing Company, and this became pertinent information with respect to that particular offering.

Q I see.

Now, does this letter, since I have called it to your attention, refresh your recollection thatyou knew about the Value Line deal before March 11th of 1969?

A I would have to say that my recollection was incorrect. That obviously sets the time that I became aware of the transaction.

Q You didn't say anything in the offering circular, Mr. Malmon, about the Value Line deal, did you?

A No, sir.

Q As a matter of fact, wouldn't information about the Value Line deal have increased the chances of the offering being successful if it had been disclosed? Wasn't this a big thing for Richard Packing Company?

A I would say yes, it was.

Q And did anybody tell you not to put it in the offering circular?

A No, sir, not to my recollection.

Q Mr. Malmon, did you restify yesterday that you had not heard anything about Kelly, Andrews & Bradley until you got some letters on March 17, 1969?

A To my recollection, yes I did. That is what I testified yesterday.

Q Is that the same recollection, Mr. Malmon, that you relied on in connection with your statement about when you heard about the ~~valve~~ Value line? Same recollection, isn't it?

A Yes, sir.

Q Operation of your mind?

A That's correct.

Q You might be wrong about that, isn't that true?

A No question; I have been wrong before in my life and I could be wrong now.

Q And you could have heard about Kelly, Andrews & Bradley before the effective date of the offering circular, to wit: March 11, 1969, isn't that right?

A Definitely is possible.

MR. BLOCK: Would you mark this, please?

(Defendant Cohen's Exhibit F, marked for identification.)

Q I show you F for identification. Do you recognize that letter, sir?

A Yes, this is a letter that--

Q All right, you recognize it.

A I recognize it, yes.

Q Is it a letter that is signed by Milton Cohen?

A It is.

MR. BLOCK: I offer it in evidence.

THE COURT: Show it to counsel.

(Pause.)

MR. FEFFER: May I ask a few questions on the voir dire, your Honor?

THE COURT: You may.

VOIR DIRE EXAMINATION

BY MR. FEFFER:

Q Mr. Malmon, when was the first time that you saw this letter?

MR. BLOCK: I think that is cross examination.

MR. FEFFER: He asked to identify a letter --

THE COURT: Overruled.

A Again, to the best of my recollection that letter was received in my file, the first time I saw it in my file, was when I was reviewing my file for preparation for this testimony. I don't recall ever having seen that letter before, although it was in my file.

MR. FEFFER: No objection.

THE COURT: Received.

(Defendant Cohen's Exhibit F, received in evidence.)

elv 3 Malmon-cross

MR. BLOCK: May I read it to the jury, your Honor?

THE COURT: Yes, you may.

MR. BLOCK: The letter on the letterhead of Richard Packing Company dated March 5, 1969, signed by M. J. Cohen, that's Milton Cohen, the defendant, addressed to Kelly, Andrews & Bradley, Inc. This is dated March 5, 1969.

(Mr. Block read to the jury from Defendant Cohen's Exhibit F, in evidence.)

Q Sir, I'd like to ask you about a couple of things in that letter. The first sentence about the registration being effective around March 10th is correct, isn't that right?

A That's correct.

Q Didn't Mr. Cohen have a perfect right to say in the last sentence that he would not expect to get less than $28 a share?

MR. FEFFER: Objection to the form of the question, your Honor, about "perfect right".

THE COURT: It is objectionable in this country of ours. Most people have a perfect right to do many things. I am going to let him answer the question. Overruled.

A Since we said on the cover page of the pros= pectus that he was the one who was being in charge of selling the shares, I would assume that he would have the right on behalf of the company to attempt to sell the shares for any price as long as the total price that he received did not exceed $300,000.

Q There is a second sentence in there in which it said that "We would expect you to handle the sale," is that right?

A He said --

Q Read that second sentence, please.

A "I would appreciate your handling the sale".

Q Yes. Do you know, sir, whether or not Kelly, Andrews & Bradley handled the sale or simply billed, did the billing?

A I don't know either. I only know from my own facts that I have seen, that 10,000 shares were directed to be issued and were issued in the name of Kelly, Andrews & Bradley. I know absolutely none of the surrounding facts. I don't know who sold them, whether Milt Cohen sold them and they billed them or anything surrounding it. To this day, I don't know.

Q Didn't you ever hear anything? Didn't Mr. Cohen ever tell you at any time -- now at any time -- that

THE CLERK: The other number was 19A.

THE COURT: Very well.

Q I show you Defendant Cohen's Exhibit G for identification. Did you ever see those checks?

A No, sir. Never saw them.

Q Did you ever know that Kelly, Andrews & Bradley remitted a sum of money to Richard Packing Company?

A No, sir.

Q You never were informed about that?

A No, sir.

Q Did you ever inquire of Mr. Cohen as to how the issue had been sold -- I will withdraw that and ask you this question:

Prior to the time that you filed the 2A in February of 1970, had you inquired of Mr. Cohen as to how this issue of 10,000 shares had been sold?

A Not to my recollection, no. I just knew it was sold because I had been instructed to issue the shares, and I did.

Q Didn't you think in connection with the preparation of the 2A that it was your responsibility as counsel preparing that inquiry?

A You said subsequent to the preparation of the

Form 2A.

Q Prior to it.

A Only, -- I only began to inquire when it became necessary to prepare the Form 2A.

Q All right.

A Now, the Form 2A, I have to explain, is not general, not always prepared by counsel for the company. It is an accounting document. It is often prepared by the company --

Q Mr. Malmon, please --

MR. FEFFER: Objection, your Honor.

MR. BLOCK: Move to strike it, your Honor.

THE COURT: The last part of the answer was not responsive to any pending question. I will strike it. This is the first time I have done this. The last part of the answer by Mr. Malmon was not responsive to a question. You will find that happens from time to time. Counsel asked that the answer be stricken as not responsive. I have said strike it, and you will recall that when I was impaneling the jury I said there would be occasions when I would say "strike it", and now I say in this case, erase the last part of the witness' answer from your mind and disregard it.

You may proceed, Mr. Block.

Q Let me make it very clear, sir. I'm not trying to trap you or anything. I am just asking you if before the filing of the 2A on February 25, 1970, you had not discussed with Mr. Cohen in any way, shape or form, how the issue was sold?

A I had discussed with him only that the issue was sold. I never had discussed with him how the issue was sold.

Q And he never told you prior to that time whether or not Kelly, Andrews & Bradley had just done the billing?

THE COURT: Prior to what time?

Q I'm talking about before February 25, 1970, in connection with the 2A.

THE COURT: All right, go ahead, Mr. Malmon, proceed.

A No, to my recollection, no.

Q You previously identified Exhibit 9A, which is this letter of Mr. Cohen's of March 17, 1969 to the Northwestern Bank asking them to transfer 1,000 shares to Kelly, Andrews & Bradley, right?

A Correct.

Q Is there an accompanying letter from you -- and then what you have done, you wrote an accompanying

letter to the bank in effect seconding Mr. Cohen's request, is that right?

A That's correct.

Q I show you 9C for identification and that is a copy of a letter from Richard Packing Company to the bank, right?

A Correct.

Q Did you testify yesterday that even though that letter is signed Richard Packing Company by Mr. Cohen, President, that that letter was prepared in your office?

A That's correct.

Q Typed on your typewriter?

A That's correct.

Q Didn't you inquire of Mr. Cohen at all as to the circumstances surrounding the transfer of these shares to Kelly, Andrews & Bradley? Didn't you discuss it at that time, at all?

A No, because it didn't appear to me to be unusual.

Q Did you have any notion as to what kind of an operation Kelly, Andrews & Bradley was, whether it was in the dry goods business or a brokerage house or a luncheonette? Did you have any knowledge of what kind of a company it was?

A Oh, I think I must have known it was a brokerage house.

Q You knew it was a brokerage house?

A Yes, I think so.

Q When you find an entire issue of 10,000 shares all going to one brokerage house, didn't that suggest to you that maybe the brokerage house was an underwriter, or something? Didn't it put you on any inquiry at all?

A Perhaps it should have.

Q But it did not?

A No, it did not.

Q I would like you to assume, sir, that Kelly, Andrews & Bradley did the billing on this issue. If that was the role that Kelly, Andrews & Bradley played here, in your opinion, sir, should they have been shown as an underwriter in an amended offering circular in the 2A filed on February 25, 1970?

A Would you please repeat that question?

THE COURT: Mr. Reporter.

(Question read back by the reporter.)

A That is a difficult question to answer. I would say that because it has so many words in it of meaning to an SEC lawyer. But I would say if you meant would I have insisted that it be in the offering circular, that they be named "underwriter" the answer is clearly no, they were not underwriters.

Q They were not?

A No. If I would have had it in my recollection to state that they were the billing agent -- I would say clearly no, they would not be underwriters, in my opinion but they might be deemed to be underwriters in that fancy SEC type of language, and if they were merely billing agents, I would say no, they would not be underwriters.

Q If we assume they were billing agents, in your opinion, would it have been necessary to show that in the offering circular or the 2A?

A Would you repeat that question.

THE COURT: Mr. Reporter.

(Question read back by the reporter.)

A I would have liked to have seen it there, but in my opinion, it would not have been a material omission. That is the only way I can answer the question.

Q We were talking a moment ago about that letter that Mr. Cohen had written, and I think you have it there, a defense exhibit -- that letter to Mr. Shwidock, Kelly, Andrews & Bradley?

A Yes.

THE COURT: That's Defendant Cohen's Exhibit F, in evidence?

THE WITNESS: Correct.

THE COURT: Well, he has already said so, Mr. Block. I will let the answer stand. He is not suggesting anything like that.

Q And of course you really have no information now, as you sit there, that that letter could have been in your file any time on and after the date it was written, allowing for a reasonable interval during which the services of the Post Office Department were involved, isn't that correct?

A Absolutely possible that this letter was in my file in our office on March 6th. It is possible.

MR. BLOCK: I was going to start on a new line, your Honor. Do you want me to go right to the minute of one o'clock? I think this would be a good time to break.

THE COURT: This time I will take your suggestion, Mr. Block. This jury has been sitting very patiently and attentively and I'm sure absorbing the testimony which has covered a fairly broad spectrum of the securities industry and I think it would be a good time for you to get some refreshment.

We will take our luncheon recess now. I make the usual admonition, which is that you not discuss the case among yourselves nor remain and overhear, whether it

MR. SEGAL: Your Honor, can we have --

THE COURT: Let me say this. You apparently spoke with Mr. Deutsch, you said something, on a daily basis?

THE WITNESS: I spoke to him every day or every other day.

THE COURT: Did there come a time when you had the first conversation with him?

THE WITNESS: Sure.

THE COURT: And can you tell us to the best of your recollection what he said to you, what you said to him, and if there is a conversation in the next day or after that, just continue along, if you can, and tell us the substance of these conversations.

THE WITNESS: In general, the conversations were to tell me that certain transactions had been done between customers of Mr. Deutsch's, or sometimes the brokerage firm's in Kelly, Andrews, and had done a trade together. He would inform me of it, and then therefore I would go ahead and file it through and write the ticket and type it and mail it out.

MR. SEGAL: Your Honor, I ask that that be stricken.

THE COURT: No, I will let it stand for what

its worth.

MR. ROBSON: If your Honor, please, I object to it also on the ground that there is no indication that it has any reference to this case or the stocks involved in this case.

THE COURT: I presume it is background. Your objection is overruled. Incidentally, since we were talking about a conversation with Mr. Deutsch, this is offered against Mr. Duboff subject to connection, ladies and gentlemen.

Let me just go back to try to get some background here.

BY THE COURT:

Q You went to work for Kelly, Andrews and Bradley in the fall of 1969?

A Yes.

Q Could you tell us what the business of Kelly, Andrews & Bradley was when you went to work for them?

A They were an over-the-counter firm and they did underwritings. Over-the-counter brokerage firm being they traded in unlisted securities not listed on the New York Stock Exchange or the American Stock Exchange.

Q Where were they located?

A 111 John Street.

Q Here in this city?

A In the Wall Street area, yes.

Q The borough of Manhattan?

A Right.

BY MR. SCHATTEN:

Q In these conversations that you have told the Court and jury about with Mr. Deutsch, what information did Mr. DEutsch give you, if any, in these conversations?

A He would tell me about different trades that had been -- he had done for clients or wanted done for clients or for brokerage firms.

A client of his bought 500 shares of a certain stock at a certain price and then the confirmation would go out to them, I'd type it and sent it out to them.

Q And you mentioned broker to broker conversations?

A Yes, occasionally.

Q What were the nature of those conversations?

A If another brokerage firm and Kelly, Andrews & Bradley were to do -- if Kelly, Andrews & Bradley were to buy 100 shares or 1,000 shares or something of the stock that another brokerage firm had, then I would just simply write the confirmation that we were doing that trade with another brokerage firm.

Q In those conversations would Mr. Deutsch give you the name of the other brokerage firm?

A Yes.

Q Did you have telephone conversations with Mr. Duboff during the time --

MR. SEGAL: Your Honor.

THE COURT: Let him finish.

Q Did you have telephone conversations with Mr. Duboff during the course of your employment at Kelly, Andrews & Bradley?

A Yes.

Q Would you tell the Court and jury, with as much specificity as possible, the nature of those conversations, what was said by you and what was said by Mr. Duboff?

A Mr. Duboff would also give me instructions on transactions, whether it be customer or broker, very similar to the ones Mr. Deutsch gave me.

Q Are you familiar with the name Harry Morganstin?

A Yes.

Q Who is Mr. Morganstin?

A A customer of Kelly, Andrews & Bradley's.

Q Are you familiar with the name William Harris?

A Yes.

Q Who is Mr. Harris?

A He was also a customer.

Q Did there come a time when you conferred with Mr. Deutsch with respect to the account of Mr. Harris and Mr. Morganstin at Kelly, Andrews & Bradley?

A Yes.

Q Did there come a time when you conferred with Mr. Duboff with respect to the accounts of Mr. Harris, Mr. Morganstin at Kelly, Andrews & Bradley?

A Yes.

Q What were the natu re of the conversations that you had with Mr. Deutsch with respect to the accounts of Mr. Harris and Mr. Morganstin at Kelly, Andrews & Bradley?

MR. SEGAL: Your Honor, may we have a date fixed when this alleged conversation took place?

THE COURT: Yes, I think that's a reasonable request.

You indicated you did have a conversation, or maybe more than one, with Mr. Deutsch on this subject. Can you tell us the date or approximate date when you had the first of these conversations?

THE WITNESS: I would say within three weeks after I was working there.

THE COURT: Which would have been in the fall of 1968?

THE WITNESS: Yes.

THE COURT: Can you give us a month?

THE WITNESS: I would say October.

THE COURT: You think October?

THE WITNESS: Around October, yes.

Q What was the nature of that conversation?

MR. SEGAL: Objection, your Honor. I would object to this kind of description.

of the accounts in the firm?

THE WITNESS: It would be those two.

THE COURT: They were the most active of all the accounts in the firm?

THE WTNESS: Yes.

BY MR. SCHATTEN:

Q Mrs. Quinn,--

MR. ROBSON: Your Honor, I object to that testimony as irrelevant and move to have it stricken.

THE COURT: Overruled.

MR. SEGAL: I join in the objection.

THE COURT: Overruled.

Q When you say accounts actively traded, what do you mean by that?

A Just simply that the customer buys or sells a lot of stock.

Q Did you ever speak to or meet Mr. Harris during the time you were employed at Kelly, Andrews & Bradley?

A No, I never did.

Q Did you ever speak to or meet Mr. Morganstin during the time you were employed by Kelly, Andrews & Bradley?

MR. SEGAL: Objection, your Honor. It has not

the jury being able to hear.

MR. SEGAL: Yes, sir.

THE COURT: Thank you, Mr. Segal.

Repeat the question.

(Record read.)

A No.

Q Do you have any idea, Mrs. Quinn, about how many stocks were handled by Kelly, Andrews & Bradley during the period of time you were employed by them?

A In total?

Q Yes.

A (No response.)

Q Would you say thousands?

A No.

Q Hundreds?

A I would say in the hundreds.

Q And these conversations that you spoke about that you had with Mr. Shwidock about directions, could that have been in relation to any one of those hundreds of stocks?

A I was given instructions, and whatever the stock was part of the instructions, that was the ticket that was typed.

Q My question was: Were those instructions given

about any particular stock or could it have been on any stock?

A Any stock.

Q And you have no recollection as to what stock, do you?

A No. No specific stock.

Q You had been employed by Kelly, Andrews & Bradley for only a period of a few weeks, you indicated, when you had this conversation, as you described it, with Mr. Shwidock about such instructions?

A Yes.

Q Do you have an independent recollection of that or did you review something in order to refresh your recollection of that?

A I just have an independent recollection of that.

Q Have you consulted with members of the United States Attorney's office?

A I was requested by them to come and tell why I was here.

Q Were you interviewed by them?

A I don't understand what you mean.

THE COURT: Did they talk to you before you went on the stand?

THE WITNESS: Yes.

Q On how many occasions can you recall speaking to Mr. Deane about Richard Packing?

A I can't recall a specific number.

Q Can you recall whether or not in any conversation with Mr. Deane about Richard Packing you were relying on a conversation thatyou had had previously with either Mr. Deutsch or Mr. Duboff?

A No.

It was one of three people --

Q I beg your pardon?

A No.

Q In other words, as you sit here now you are unable, are you not, to recall whether in fact you ever spoke to Mr. Deane about Richard Packing after having first spoken to either Mr. Deutsch or Mr. Duboff?

MR. FEFFER: Objection, your Honor.

THE COURT: I will sustain an objection as to form. That was not the way I heard her last answer.

If you would like to read back before you close your question, I will permit that. If you want to pose a new question, you may.

MR. ROBSON: I will pose a new question to make sure it is clear.

Q Can you recall at this time any occasion on which

****

case.

THE COURT: I recognize that, too.

MR. FEFFER: Your Honor, with respect to this, number one, it is very, very untimely. We are sitting here with the witness that is going to take the stand today or tomorrow and this has been on the face of the indictment since November 29th and it is an incredible burden on the Government if this is stricken to reorient its case or that witness.

THE COURT: A motion for severance based on an experience that I had can be made and remade throughout the course of the trial. There may come a time during the trial, and I don't say this is the case, when for one reason or another that motion is proper and, therefore, I don't think we can fairly say that a motion for severance can only be made as a pretrial motion.

MR. FEFFER: The point is that this information was readily available as of November 29, 1973, the date of the filing of the indictment, and no motion has been made in this regard pretrial, and I believe there was a time set by your Honor for motions to be in and disposed of, and no motion in this regard was made.

MR. ROBSON: A motion to strike testimony --

MR. FEFFER: Not testimony, but a --

THE COURT: Now he says that he has now received the 3500 material which is terribly prejudicial to his cause. I recognize your point and will take it into account.

At the same time, I would suggest at least on one facet of the case that a motion for severance can properly be made at almost any time during the course of the trial. I would not be surpirsed that it could be made right up through the close of the Government case and maybe even into the defendants' case. I think it is timely at any time.

The weight that I will give it and what I will do with it is another story.

(In open court; jury present.)

THE COURT: Good morning, ladies and gentlemen. I hope that you had a pleasant three-day recess. Everyone looks bright and spring-like today.

I think we are going to have an interesting day, all of us.

We are going to resume the trial now with the testimony of Mr. Malmon, who you recall was on the stand Thursday morning and then was excused so that you could hear Mrs. Quinn on Thursday afternoon. Mr. Malmon I see is here and ready to go.

A Yes.

Q That that is an important determination, as to whether material matter is a material omission or not?

A That's correct.

Q That is the key, isn't it -- a key?

A IT is a key.

Q In addition to what I suggested, what else did you have in your mind in saying that it was not a material omission?

A Whether or not the omission of that material from the offering circular or the prospectus, as the case may be, makes the prospectus misleading, and it is my opinion that the omission of that would not have made the prospectus misleading.

Q In any way?

A In any way.

Q Thank you. Would your answer be even more emphatic if you were to assume that the fee which Kelly, Andrews & Bradley got for doing the billing was very substantially less than the $10,000 in concessions mentioned in the offering circular? Wouldn't that reinforce your statement?

A No, because if they were billing agents, they were billing agents, and that was one of the things that

at a certain period of time, is that correct?

A That's correct.

Q Did you consult at all with those accountant , any of those accountants, either the Lybrand firm or the Broadcorb firm in connection with the preparation of 2A?

A I don't specifically recall.

Q Who in your office was charged with the initial responsibility for collecting the information necessary to put in this 2A, do you recall that?

A Not specifically, but it would have had to have been either myself, my secretary or one of my associates, Mr. Mirvis, one of my partners.

Q Your secretary is not a lawyer?

A No.

Q She takes dictation?

A That's correct. She is a very good secretary.

Q I wasn't questioning that. I was just questioning how good a lawyer she might have been.

So that should have been 280,000. Then "Underwriting discount allowed," and there is a figure of $10,000. Does that bear any relation to reality?

A As far as I know, it is incorrect.

Q Would it be fair to say that what probably happened is that you looked at the offering circular and

saw that the company hoped to get 300,000, that they had allowed $10,000 for dealer's concessions and just on the basis of the offering circular without reference to what actually happened, these figures were put in there?

A That's a plausible explanation.

(Continued on the next page.)

Q You can't even furnish us any other explanation, can you?

MR. FEFFER: Objection.

THE COURT: Sustained.

MR. BLOCK: The witness so testified and I press the question, your Honor.

THE COURT: Ask a new question, on the same line

Q Is there any other explanation besides that one that you can think of?

A None that I can think of, no.

Q As a matter of fact, did you even have an underwriting discount if you didn't have an underwriter?

A No, sir, I wouldn't think so.

Q So it is totally incorrect, not only the amount but even putting in that particular line, 6-b?

A I would say it was probably incorrect.

Q Then we come to 6-d and a listing of expenses.

There is one legal, including organization, $3,500. Now, did that reflect the fee that your firm charged for handling the organization of Richard Packing plus the preparation of the offering circular, do you recall?

A In this particular instance, the company was already organized and this would have been only the work for this particular second Reg A.

A Not exactly whom amongst the three parties that I mentioned, no.

Q Now, we find that if you look at 6-f you see "proceeds to issuer after the above deductions," which we have gone through, was $282,500; right?

A That's correct.

Q And then, if you look at 7-f, where it says "balance of cash proceeds on hand," after deducting all the other payments set forth under 7, you get $282,500?

A 7-j.

THE COURT: You said "f," I believe.

Q Pardon me. That is 7-j.

That is clearly erroneous?

A Yes.

Q Let's turn to Item 10: "List the names and addresses of all brokers and dealers who have, to the knowledge of the issuer or underwriters, participated in the distribution of the securities offered during the period covered by this report," and the answer is given as "None."

Do you see that?

A Yes, sir.

Q As of this time, of course, you knew about Kelly, Andrews & Bradley, right?

A Yes, sir.

Q You knew Kelly, Andrews & Bradley had had transferred to them 10,000 shares of Richard Packing Company on the second Reg A that was unrestricted stock, available to the public; right?

A That's correct.

Q Without trying to put you on a spot, wouldn't you say that the answer "None" is incorrect?

A Perhaps.

The words are words of art. The word "underwriters" is a word of art; "participated in the distribution of the securities offered in the period covered," the term "distribution" is a word of art.

Q Do you mind explaining what you mean to the jury?

A Those are phrases and words that have shades of legal meaning and definition, and I am not certain whether -- had I had in mind that Kelly, Andrews & Bradley had been in any way connected with the offering, whether as underwriters or billing agents, I believe that I would have answered that question differently, but I am not certain that the answer "None" is in fact incorrect if in fact Kelly, Andrews & Bradley were only in the offering as a result of being a billing agent, and that would depend on whether or not in fact any other brokers and dealers did in fact find buyers and place the stock, and I don't have

that in my knowledge.

I would have preferred to answer that question differently had I had the fact that Kelly, Andrews & Bradley were billing agents, and I would have preferred to answer that by naming them, but it is not necessarily wrong.

Q You did have that knowledge at that time?

A That's correct.

Q But when it came to filling out this form, i somehow or other eluded your consciousness?

A Was not in my consciousness at the time, apparently. I know I did review it and --

Q You reviewed the paper?

A The form, that's correct.

Q Milton Cohen didn't tell you not to put Kelly, Andrews & Bradley in there, sis he?

MR. FEFFER: Objection, your Honor.

THE COURT: Sustained.

Q Did Mr. Milton Cohen tell you to omit -- to put "None" down in answer to that question?

A I can't specifically recall --

Q Even discussing it with him?

A Whether he did it or not or even discussing it with him.

a quarter of 1:00.

Please don't discuss the case among yourselves whilst in the jury room and continue to keep an open mind on all phases of the case.

The jury is excused for a ten-minute recess.

You may step down, sir.

(The jury left the courtroom.)

THE COURT: We will be ten minutes, gentlemen.

(Recess.)

(In open court; jury present.)

A L V I N M A L M O N, resumed.

THE COURT: You may inquire, Mr. Segal.

CROSS-EXAMINATION

BY MR. SEGAL:

Q Mr. Malmon, did you have some familiarity with Mr. Deutsch and what his connection was, what his role was, with Richard Packing?

A Only from conversations that I had with MR. Cohen.

Q Could you just tell us briefly just what you understood his role to be as a result of those conversations?

A That his role was to be, first of all, and most important, the obtaining of additional market makers for stock of Richard Packing Company, that is, to get additional brokers to make a market in the stock, especially outside of

the Minneapolis-St. Paul area.

And to be a financial advisor to the company.

Q When you were apprised of that, did you make any comment about these duties or this role?

A Not that I can recall, no, sir.

Q Did you decide in your own mind that there was anything improper in that restriction of duties?

MR. FEFFER: Objection, your Honor.

THE COURT: Sustained.

Q Did you reach any conclusions as to whether or not Mr. Deutsch should be inhibited from doing these changes?

MR. FEFFER: Objection, your Honor.

THE COURT: Sustained.

Q Did you say anything to Mr. Cohen about those comments that were made to you?

A No, sir.

Q In your opinion, there was nothing wrong with either of those two roles?

MR. FEFFER: Objection, your Honor.

THE COURT: Sustained.

Q You testified in the grand jury, have you not?

A I'm sorry. Is that the end of your question?

Q Yes.

its goals?

A As a director, I can say I hoped that that would occur, yes.

Q As a director, you did, did you not, approve this procedure of getting additional funds so that the company could get on its way or further on its way?

A Absolutely. The public market is a fine, very fine way to raise funds for a developing company.

Q In connection with the options that were granted, I take it you never had any discussion about those optins or the amount of those options with Mr. Deutsch?

A Never.

Q We had talked here earlier about the fact that at a point subsequent to the offering a discussion was made to declare a stock dividend. Do you recall that?

A Yes, sir.

Q And the result of that dividend was to place more shares in the hands of the public; is that right?

A That's correct.

Q It increased it to about what, fifty some percent?

A I think the exact percentage would be 56⅛ I think, is my recollection.

Q There was an increase of 56⅛ percent more share

A Yes, I was aware --

Q Did you know that he had traveled about hte country on the company's behalf in attempting to increase its ability to perform by obtaining acquisitions and by suggesting new ways of marketing the company's product?

A No, I was not aware of that.

Q Were you aware that there were suggestions about a circus wagon that may have emanated from Mr. Deutsch?

A I was aware of the suggestions about the circus wagon concept but not aware of where it originated.

Q Were you aware Mr. Deutsch traveled on behalf of the company in trying to promote that concept?

A No, sir.

Q Were you ever told that by Mr. Cohen?

A No, sir.

Q Were you ever told that Mr. Deutsch traveled on behalf of the company in order to assist it in obtaining new products?

A No, sir.

Q You were aware, were you not, that Mr. Deutsch had assisted the company in its franchise program?

A That Status Marketing had assisted the company in its franchise program, not specifically that Mr. Deutsch himself had done it.

Q Were you ever told of the fact that he had helped with the franchise program? Does it refresh your recollection that you had a conversation at one point in which you stated that Mr. Deutsch had helped with the franchise program, things of that nature?

A I think my recollection was that he had introduced them to the Status Marketing people, but that he had specifically himself done anything to conjure up the Status Marketing program, I don't have any recollection of that.

Q Then I am being too specific. By "assist" I don't mean his function was to conceive and form the ideas, but it was your understanding that he had at least introduced them to individuals who were then able to develop ideas for the company?

A Yes, I did have a recollection of that.

Q And that his role, in that sense, was a role in which he would put the company in touch with people who could assist in the concepts of developing the work of the company?

MR. FEFFER: I object to that question, your Honor.

THE COURT: I will sustain the objection.

Q Were you aware that Mr. Deutsch was introducing

the company to individuals who could assist in promoting the development of that organization?

A Only to the extent of Status Marketing. That is the only one I specifically knew of.

Q Do you recall giving these answers to these questions in your grand jury appearance of June 8, 1973 --

MR. FEFFER: Your Honor, I object to reading exhibits which are not in evidence, unless it is done for a purpose which is proper.

THE COURT: I assume Mr. Segal has a proper purpose. Do you want to refresh his recollection, impeach him?

MR. SEGAL: I want to refresh his recollection, your Honor.

THE COURT: All right, fine, let's exhaust it first.

Q Do you recall testifying at an earlier stage that in fact the award of options and warrants to Mr. Deutsch was for services he had performed on behalf of the company?

A I recall answering a question to the effect that the answer would evoke that response, yes.

Q At that point was that in effect the same as the testimony you had given on an earlier occasion?

A I don't understand the question.

Q Do you recall talking about the fact that the award of those options was because of services that had been rendered already to the company?

A In part, yes.

Q Did you contemplate that services would be rendered in the future to the company?

A Yes, I did.

Q And those services, I take it, were in connection with the continuation of his efforts in connection with franchising and development of the business?

A Yes.

Q And if it had been for any other purpose, you wouldn't have allowed it, would you?

A No, I can't say that. If it had been for any other proper purpose I would have been in favor of it just the same.

Q If it had been for the purpose of selling stock, would you have allowed it?

MR. FEFFER: Objection, your Honor.

THE COURT: Yes, I will sustain it.

Q Would you have agreed to award options to an individual for the purpose of selling stock?

MR. FEFFER: Objection, your Honor.

THE COURT: Sustained.

MR. SEGAL: I have no further questions, your Honor.

THE COURT: Thank you, Mr. Segal.

Mr. Robson.

CROSS EXAMINATION

BY MR. ROBSON:

Q Mr. Malmon, before we start -- I withdraw that. We actually started.

Do you know my client, Mr. Duboff?

A I have never met him, aside from this hearing.

Q Have you ever spoken to him?

A Not that I can recall.

Q Have you ever discussed him at all except on that one occasion when his name or his wife's name was listed in the group of people who were to receive stock options?

A No, sir.

Q Mr. Malmon --

A I have to correct that:

At what period of time are you talking about?

Q During the period from the time you started working on the registration statement for Richard Packing

through, say, themiddle of 1970.

A No, those were the only times, that's correct.

Q If I understood your testimony correctly, you specialize in work involving the Securities Act of 1933 and the Securities and Exchange Act of 1934, is that correct?

A I did during the period of time involved in this particular matter. There isn't much of that type of work right now.

Q I know the problem , since I specialize in it also.

Those are the two Acts which deal with the regulation of the sale of securities?

A That's correct.

Q And in connection with those Acts, there are a substantial number of regulations which have been adopted by the Securities and Exchange Commission, is that correct?

A That is absolutely correct.

Q And in connection with that Act the Securities and Exchange Commission issues on a fairly frequent, almost daily basis, all sorts of interpretations and rulings and modifications and amendments of its regulations?

A That's correct.

Q As a result, the field has become a rather complicated one for lawyers.

A One of the most complicated.

Q So complicated, as a matter of fact, that most lawyers could not handle that sort of work because they are not familiar with it and refer to people like yourself.

MR. FEFFER: Objection, your HOnor.

THE COURT: Yes, I will sustain the objection. He said it was complicated.

Q Did you in fact receive many referrals of work from other lawyers because of your role as a specialist?

A I did receive some, yes, sir.

Q As part of the work of a lawyer in the securities field, you are required when the market is good to prepare prospectuses and offering circulars, is that correct?

A Yes, sir.

Q And is it also correct that for all intents and purposes an offering circular and a prospectus serve the same function and are used for the same reasons?

A That's correct, a different name for almost

1 rmmch **** Malmon-cross

Q When we talk, then, about a public offering, we don't necessarily mean, do we, an offering to anybody and everybody in the United States?

A That is definitely correct.

Q One of the requirements in the registration statement, is it not, is that one must reveal the identity of any underwriter?

A That is correct.

Q And the term "underwriter" is a term which is defined in the Securities Act, is that correct?

A Partly, yes.

Q But it is a definition about which there is much disagreement, is that correct?

A That is correct.

Q And the question of whether or not a particular individual is or is not an underwriter is a question which depends upon one's interpretation?

A That is correct.

Q On the basis of what you have been told and what you know at this date, was Kelly, Andrews & Bradley in your opinion an underwriter?

MR. FEFFER: Objection, your Honor. That is the ultimate issue.

THE COURT: Let's hear his opinion. I don't think

it is determinative of anything and we can give it such weight as the jury believes appropriate and disregard it i the jury believes it has little, if any, weight.

A If they in fact served the function of only billing and did not find the prospective buyers -- if we assume that fact, I would say, in my opinion, they were not an underwriter.

Q During the course of the period when you prepared the offering circular, I believe you indicated you had a number of conversations with Mr. Milton Cohen, who was the president of Richard Packing; is that correct?

A That's correct.

Q And I expect that the purpose of those meetings was to discuss the material that was to be included in the offering circular?

A That is correct.

Q From time to time during those conversations did you advise Mr. Cohen of what the law required with respect to inclusion of certain information?

A Yes, I think I did.

Q Can you tell us whether you have had any conversations with Mr. Cohen during which you explained to him the meaning of an underwriter and what was and what was not required to be included in the prospectus?

A I don't recall that I ever specifically described to him what was or was not an underwriter, but I did ask him how the stock was going to be sold.

Q What did he tell you?

A That he was going to sell the stock with the help of Mr. Deutsch.

Q Was there anything on the basis of that information that to your understanding was required to be revealed in the prospectus?

A No, sir, as long as he did the physical selling and Mr. Deutsch merely furnished the prospectus, I did not consider that necessary to divulge.

Q This was a self-underwriting, as lawyers refer to it?

A That is correct.

Q By that we mean that no agent was being employed as an underwriter, a broker, to sell the stock?

A That's correct.

Q However, on the basis of what I read in the prospectus, am I correct in understanding --

MR. ROBSON: Do we have an objection?

MR. FEFFER: Yes. I object to the form of the question.

THE COURT: He has not finished it yet, but I

have to use a broker, is that correct?

A That is correct.

Q There was nothing improper about that, as far as you understand the law, was there?

A No, sir.

Q At the time that Mr. Cohen told you that they might use brokers, they might proceed in a slightly different fashion, did you give him any instructions with respect to keeping you advised of the progress of the sale?

A I can't recall that I specifically told him that if any other method is used that he should make sure and tell me.

No, sir, I can't recall that specific comment.

Q During the period immediately after March 11, 1969, when the underwriting became effective, did you have any conversations with Mr. Cohen with respect to how the sale was going and how it was being handled?

A No conversations, no, sir.

Q Incidentally, by going effective, we mean the date on which the SEC has said it's permissible for you to sell these shares.

A That is correct.

Q And they are now satisfied with the registration statement.

6 rnmch **** Malmon-cross

A That's correct.

Q If I understand your testimony correctly, the first time that you are certain that you recall that Kelly, Andrews & Bradley was somehow involved was when you received that letter dated March 17, 1969 -- I don't remember the exhibit number --

A That is my best recollection.

Q And that was about six days after the effective date; is that correct?

A Yes, sir.

Q When you received that letter, you knew then, of course, that Kelly, Andrews & Bradley was somehow involved in this transaction?

A That's correct.

Q And that was not concealed from you by anybody?

A No, sir.

Q Did you then ask Mr. Cohen exactly what Kelly, Andrews & Bradley, or anybody else, had done?

A No, sir, I did not.

Q And the decision not to file any amendment, or the failure to make a decision to file the amendment was entirely yours; is that correct?

A No, I wouldn't say that. It certainly was partially mine. I didn't initiate it. That I can say, I did not

initiate any move to make [illegible]ment.

Q Despite the fact that you knew Kelly, Andrews & Bradley was somewhere involved?

A That is correct.

Q Nobody, not Mr. Cohen, Mr. Deutsch, and certainly not Mr. Duboff, whom you had never spoken to, had told you that Kelly, Andrews & Bradley was not to be in it?

A No, sir.

Q Sometime shortly before the filing of the registration statement with the SEC, you were instructed, I believe you testified, that certain stock options were to be granted to a number of people; is that correct?

A That's correct.

Q And at that time Mr. Cohen advised you that it was -- that the stock options were being given for services performed by these individuals?

A In part, yes.

Q In what part is that not correct?

A Services performed and to be performed.

Q Did you ask Mr. Cohen the nature of the services to be performed?

A No, sir, I don't recall that we ever had a discussion about that.

Q Did you ask Mr. Cohen the nature of the services

which had been performed?

A I don't recall that we discussed that, either. I just made an assumption as to what they were.

Q At the time you knew that you were preparing a prospectus for filing with the SEC, did you not?

A Yes, sir.

Q Would it not have been more prudent for you to ascertain whether the services were in any way connected with the underwriting which you were filing?

MR. FEFFER: Objection, your Honor.

THE COURT: Sustained.

Q Did it occur to you at any time to inquire as to whether or not the compensation being given was for services rendered in connection with an underwriting?

MR. FEFFER: Objection.

THE COURT: Sustained.

Q Did you at any time indicate to Mr. Cohen in any conversation with him that if this compensation in the form of stock options in any way related to services to be performed in connection with the offering, that that information would have to be revealed in the offering circular?

A No, I did not.

Q Sometime subsequent to the underwriting you received

instructions to transfer certain shares from Mr. Harvey Cohen and Mr. Milton Cohen to various people, including Messrs. Deutsch and Duboff; is that correct?

A That's correct.

Q Did you inquire of either Milton Cohen or Harvey Cohen what the consideration or purpose was for that transaction?

A I did not.

Q Did you instruct Mr. Milton Cohen that if those certificates were being transferred in any way as compensation for services rendered in connection with the underwriting that that fact might have to be reported to the SEC?

MR. PEFFER: I object to this question as totally irrelevant. The stock was given substantially after the offering was completed.

MR. ROBSON: May I call your attention to the allegation in the complaint which says that stock was compensation for the underwriting?

THE COURT: I think we know what counsel means. I will allow the question. We will see whether there was such conversation.

A No, I never did give him that instruction or inquiry.

Q In the offering circular there is a statement, I believe, on the front cover, that the offering price is an estimate of the price at which the shares would be sold but that the actual price would depend upon the market and could be less than $300,000.

Can you explain what that means?

A Well, I think so. It is complicated, but I think so.

A Regulation A offering, under no circumstances can the total amount of consideration received for the stock, before the brokerage commissions and everything else, exceed $300,000. Normally, when it is the first time that a company goes public, you set a pre-determined price, as we did in the Richard Packing Company offering. When there is a pre-determined price, it is easy to multiply the number of shares to be sold by the pre-determined price to find out exactly whether you will or will not exceed $300,000.

When a company's stock is already trading on the open market, you did not know from day to day just exactly what the market price of that stock will be on any given day. So, therefore, you can only make an estimate of the exact number of shares you are going to sell and the exact price.

In this particular offering, we set the limit as an absolute maximum number of $300,000 and an absolute number of shares at 10,000. If the price of the stock would have been $31 or $32, we would only have been able to sell 9,000 and some, because that number multiplied by $32 -- we had to stay under $300,000.

If the price was only $28 or $27, because we set the maximum number of shares at 10,000, we would have received less than the maximum allowable of $300,000.

I know that is complicated and I apologize for that, but when you have a second Regulation A offering of a company whose shares are already traded, it is somewhat complicated.

I apologize to the jury. I can't make it any simpler than that. I don't know how.

Q In any event, because the stock was already a trading stock, it was impossible to know prior to the last day what the offering price would be because it would be dependent upon what the market was.

A That's correct.

Q Richard Packing was trading in what is known as the over-the-counter market?

A That's correct.

Q And in 1969 was there a list of the prices of

stocks which were trading in the over-the-counter market, like there is for the New York Stock Exchange stocks or American Stock Exchange stocks, at least for stocks like Richard Packing?

A Each broker who made a market, or each person who made a market, would put out each day, as I understand it, their offer as to what they would buy the stock at or sell it at, and that was the only way you could determine as to what the "market value" of the stock was.

Q Is it not true that as a general rule, if there were five brokers marking markets in the stock, the price of each one of those five brokers could be different?

A Might be, yes.

Q And generally was different?

A Sometimes it was the same; sometimes it was different.

Q So that when we talk about determining the market price of a stock like Richard Packing, over the counter, it is a somewhat subjective determination?

A The only thing that "market" means is that the person who makes that market offers to buy 100 shares of that stock at that price, and God only knows what the next offering might be.

Q The determination as to what price the market price

is is somewhat subjective because it depends upon what all of these brokers are willing to pay for or sell stock for; is that correct?

A That's correct.

Q The determination as to who the stock is to be sold to in connection with an offering like this may be made before the effective date, may it not?

A That's correct.

Q Just one or two more points and I will be finished with you.

Getting back to the discussion about the float, what that meant here, to some extent the price of a stock is determined by the law of supply and demand, is it not?

A Especially the over-the-counter shares, yes, I would say that is quite correct.

Q The more pieces of paper there are, the larger the supply; is that correct?

A Yes.

Q When there are only a few pieces of paper, a few stock certificates around, or the fewer there are, the greater the impact of large purchasing, is that not correct?

A Generally, I would say that is true, yes.

Q So that when a stock dividend is declared by

increasing the number of pieces of paper outstanding, the supply is increased so that purchasing doesn't have as great an effect?

MR. FEFFER: I object to the form. That has been covered already in detail.

THE COURT: I will sustain the objection. I think it is in the record.

MR. ROBSON: I think it is. I always assume maybe I can make it just a little bit clearer.

Q Mr. Malmon, did anyone, Mr. Cohen, Mr. Deutsch or anybody else at any time ever ask you to leave out any information in that offering circular?

MR. FEFFER: Objection, your Honor.

THE COURT: I am going to overrule that.

A The answer is no.

/29/74
AM 6a

Q Did Mr. Cohen at any time ever refuse to give you any information which you requested?

A Not to my recollection.

Q Did he ever refuse to answer any questions which you asked him?

A Not to my recollection.

Q In fact, however, you never asked him what Kelly, Andrews & Bradley's role was, did you?

A That is correct, I did not.

Q In fact, you never asked him exactly what role Mr. Deutsch played, did you, in the underwriting?

A In this offering, no, I didn't.

Q In fact, you never asked him how the stock was sold or to whom; is that correct?

A That is correct; I never did.

MR. ROBSON: I have no further questions.

THE COURT: Mr. Feffer?

MR. FEFFER: Thank you, your Honor.

REDIRECT EXAMINATION

BY MR. FEFFER:

Q Mr. Block asked you several questions, I believe, on cross-examination with respect to the reputation of Mr. Cohen in the business community in St. Paul. I believe you indicated --

THE COURT: I am going to permit it.

(In open court.)

BY MR. FLEFIER:

Q Mr. Malmon, I'm going to ask you to put aside your own personal opinions that you testified to before. I'm going to ask you, based on conversations with others that you have referred to and the newspaper articles that you referred to, what is Mr. Cohen's reputation as a business man in the St. Paul-Minneapolis community?

MR. BLOCK: I'm going to object to the form of that question.

THE COURT: Overruled.

A The people I talked to in the business community and whom I saw on a day-to-day basis who also know Mr. Cohen, were involved in many ventures with Mr. Cohen, among them Richard Packing Company, and from my conversations with those persons who all had made money on Richard Packing Company, who had made money in other real estate ventures with Mr. Cohen, despite the bad publicity that you referred to in the article which you have asked me about, it is my opinion that Mr. Cohen's reputation in the community was undiminished by that article, and that he was still held by these people, from my conversations with them, in high regard, both for his business ability and

for his integrity.

Q Did you speak to anybody else besides the people that gained money from their dealings with Mr. Cohen? Anybody else in the community of St. Paul and Minneapolis? Yes or no, Mr. Malmon.

A With members of my family, yes, of the Malmon family.

reached?

A Some time after the public offering in April of 1969.

Q Can a restricted stock be freed up andmade unrestricted, so to put it?

A Of course. You can always have a registration.

Q It cannot be done without a registration?

A It can be done -- at the time of -- that we are speaking about. The rules have been changed since that time.

Q At that time, yes.

A But at the time we were talking about there were some lawyers who would give you their opinion that registered stock could be sold after a holding period of two years. Other lawyers would give you their opinion that registered stock might be sold without a registration after three years. There was no unanimity of opinion.

Q You testified that certain shares held by Messrs. Cohen, the two Cohen brothers, were in large part restricted; is that correct?

A That is correct.

Q Some 375,000 shares?

A That is correct.

MR.BLOCK: They were entirely restricted.

THE COURT: It seems to me you don't have stock that is halfway. It is either restricted or it is free.

A Thatis correct, your Honor.

Q Did there come a time when Mr. Cohen, the defendant Cohen, freed up some of this restricted stock?

MR. ORENSTEIN: Objection, your Honor, it is completely irrelevant and immaterial.

THE COURT: Who is objecting on behalf of Mr. Cohen? I have now seenyou get up twice, Mr. Orenstein, and I would suggest that one counsel will handle one witness.

MR. BLOCK: I made the objection.

THE COURT: Overruled.

A Would you repeat the question?

Q Did there come a time when the defendant, Milton Cohen, freed up or made unrestricted some of the 375,000 shares thathe and his brother held?

A I freed it up on my opinion, yes. He would have no power to do that, not being counsel for the company.

Q Do you know approximately how many shares were freed up in this manner by you, approximately?

A Well, I don't recall the exact amount, but over a period of a couple of years there were 15, 20,000 shares for each of Harvey and Milton.

MR. BLOCK: Just one second.

If your Honor please, I am going to object to this and move to strike it on the ground that it is improper redirect examination.

THE COURT: Overruled.

Q Do you know how much each share of those 375,000 shares that were restricted cost Messrs. Cohen, the two Cohen brothers?

A Only insofar as when you refer to the original incorporation of Richard Packing Company, they transferred certain assets to the corporation in exchange for stock, and my recollection is that that was in the neighborhood of seventeen, eighteen cents a share, when

he is talkingabout, stock given was by the company or --

MR. BLOCK: The stock in Exhibit A.

THE COURT: He has mentioned that, Mr. Feffer.

MR. FEFFER: I'm sorry, your Honor.

Q That was where it was given to Dutawitz and Duboff and Deutsch and I think we are all clear with that particular listing, and Ward, and so forth.

Now, I was up to "didn't do that". So that, in effect, or in actuality, both Milton Cohen and Harvey Cohen dug into their own personal holdings to give this stock? Isn't that what happened?

A Yes, sir.

Q In addition to that, by their action in doing that, they did not dilute or affect the interest of any public stockholders in any way, did they?

A No, sir.

Q When you were asked a question, and we have not seen any papers on it, but you were asked a question about Mr. Cohen, Milton Cohen, freeing up his own stock, and let's talk about that for a minute, let's talk about Milton Cohen freeing up his own stock. That means, does it not, that where the stock was unregistered and restricted in his hands, in your opinion Mr. Cohen became entitled to hold that stock in the same way as members of the public who

held registered shares of the stock, is that correct?

A. Essentially, that's correct. The stock would automatically carry the same characteristics as registered stock. That is a peculiarity of our law.

Q You rendered opinions from time to time which enabled Mr. Cohen to do that?

A That's correct.

Q These were legal opinions; he consulted you about that?

A That's correct.

Q Was that on the basis of the so-called one percent rule?

A Yes, sir.

Q Would you explain briefly to the jury what the one percent rule is?

THE COURT: "Was."

MR. BLOCK: "Was." You have the advantage of me.

THE COURT: Not really.

Are you going to be referrint to Rule 154?

THE WITNESS: Yes.

THE COURT: This is a former rule by the Commission which was superseded very recently by another rule. So this is the Commission rule in effect at the time in question.

If you want to tell us about Rule 154 and the dribble theory, go ahead.

A The Securities and Exchange Commission made a determination that when a person who controlled a publicly

held corporation made such small sales from time to time of unreigstered securities,number one, as to be de minimis, which means so small it wasn't important in relation to the total number of shares outstanding, and, number two, didn't do this constantly as a pattern of what they call a distribution, didn't make it look like he was unloading all of his shares on the public -- that if such a person sold less than one percent of the total outstanding number of shares of the company -- for example, if a company had a million shares outstanding, such a person would be able to sell 10,000 shares of stock in a six-month period, and that stock would have the quality of registered stock. It would not have to be registered, but after it was sold it could be traded and retraded as if it had originally been registered.

There were two caveats: Number one, it could not be done as a constant pattern to look like you were going to sell stock every six months and get rid of the whole bundle, and, number two, you had to do it in a broker's transaction, and that meant you could not solicit a buyer. Your broker, or whoever sold the stock for you, would have to buy it in a transaction where somebody came to him and said, "I want 10,000 shares of Richard Packing stock," and he could not solicit a buyer.

If you followed these rules carefully and did not engage in "distribution," you were allowed, as the Judge so aptly put it, use the dribble principle, sell a few shares every six months and those shares would take on the character of registered shares and could be thereafter, in what I previously called the float --

Q Thank you very much, Mr. Malmon.

It was on the basis of that Rule 154 that you gave your opinions authorizing Mr. Cohen to dispose of his personal stock from time to time, is that correct?

A That's correct.

Q So there was nothing wrong with that?

A Not in my opinion, no, sir.

Q It was under the regulations?

A Yes, sir.

MR. BLOCK: Please mark this.

(Defendant Cohen's Exhibit L was marked for identification.)

Q Is this a resolution of the board of directors meeting on the Value Line deal?

A Yes, sir, it is.

MR. BLOCK: I offer it in evidence.

MR. FEFFER: No objection.

THE COURT: Mr. Robson, Mr. Segal, would you look

discussed. I want to show you Exhibit 6, which is the minutes of a special meeting of the board of directors held on September 10, 1968 which is the board of directors meeting that considered the question of issuing those stock options to a number of people, Jaffee, Kenneth Rich, Jonas, names that I read before, and I wanted to draw your attention to this paragraph that says, "The only item of business considered at the meeting pertained to proposed stock options to be granted to the following named persons at the following option prices for their services rendered to corporation."

That is your language, isn't that correct?

A Yes, sir.

Q Does that refresh your recollection, sir,to the effect that these options were given for past services rendered to the corporation? Yes or no.

A No, sir.

Q It doesn't.

A I probably should have said"and to be rendered" --

MR. BLOCK: I move to strike it.

THE COURT: Strike it.

The jury will disregard anything after it doesn't refresh the witness' recollection, because that was the nature of the question. The question was answered and it

ONLY COPY AVAILABLE

7 rmmch **** Malmon-recross

THE COURT: Mr. Robson.

RECROSS-EXAMINATION

BY MR. ROBSON:

Q Just so we have one thing clear on the stock options, when a stock option is given to somebody, that person has a right to come in and buy stock from the company?

A Yes, sir.

Q Anybody exercising a stock option, whether at $6 a share or $15,would have to come in and pay the company that money?

A That is correct.

Q Unless there was a registration, he would have to sit with that stock for two years unless he could find a private individual to buy it?

A Yes, unless there was a registration.

Q Which the company did not anticipate?

A They are very expensive propositions.

Q Did anybody exercise any of those options granted back in September or October?

A Yes.

Q Who?

A I did.

Q Did anybody else?

ONLY COPY AVAILABLE

A A brokerage firm in New York City.

Q What were your responsibilities with Wood, Walker & Company?

A I handled 30 to 50 institutional accounts, again banks, insurance companies, mutual funds and a number of private clients where I bought and sold securities on their behalf.

Q Do youknow Bernard Deutsch?

A Yes, I do.

Q Do you see Mr. Deutsch in the courtroom today?

A Yes, I do.

Q Would you please point him out?

MR. SEGAL: We will acknowledge that identification, your Honor.

THE COURT: Yes, that is conceded, that the witness knows Mr. Deutsch.

Q Do you know a Stanley Duboff?

A Yes, I do.

Q Do you see him in the courtroom?

MR. ROBSON: We will concede that.

THE COURT: That is also conceded. It is conceded that Mr. Deane knows Mr. Duboff as well.

Q When did you first meet Mr. Deutsch and Mr. Duboff?

A It wasin the summer of 1968.

Q Where did you meet them?

A I believe it was at the offices of Combustion Equipment Associates in a brownstone on 39th Street in Manhattan.

Q What were you at the office of the Combustion Equipment Company for, Mr. Deane?

A Basically to learn more about Combustion Equipment itself and to get interested in the company.

Q At that time did you have a conversation with Mr. Deutsch?

A Yes, I did.

Q Can you tell the Court and jury whatyou said to him and what he said to you?

MR. BLOCK: If your Honor please, will your Honor take this subject to connection as far as Mr. Cohen is concerned?

THE COURT: Yes, indeed I will.

Mr. Cohen was not present at the time, is that correct?

THE WITNESS: That is correct.

THE COURT: Who was present besides Mr. Deutsch?

THE WITNESS: I believe Mr. Duboff -- he may or may not have been -- a number of the executives of the

Combustion Equipment Associates, and I believe a gentleman named Jim Stewart.

THE COURT: Very well.

MR. ROBSON: I just want to ask if you will take it subject to connection as far as if Mr. Duboff was present.

THE COURT: Yes, indeed.

In this particular situation, the witness had a conversation with Mr. Deutsch. That is going to be taken by you relative to Mr. Deutsch. Relative to Mr. Cohen, who was not present, and Mr. Duboff who may not have been present, it will be taken as to those two gentlemen subject to connection, in the manner which I described previously.

You may recall that recently when we had another witness on the stand there was a good bit of testimony relative to Mr. Cohen which was taken as to Mr. Deutsch and Mr. Duboff subject to connection. Now, this is just a little bit different but it is the same theory.

Q Mr. Deane, at this meeting, what did you say to Mr. Deutsch and what did he say to you?

A I said at that time that I was interested in Richard Packing, that I had bought some stock for myself and I was interested in finding out more about the company.

Q What did he say to you?

A He said to me that he was in the process of trying to build a franchising operation similar to McDonald's, that they were developing a circus wagon on franchise concept and that he was too busy at that time to really discuss it with me and that I should call him in the next few days at his office to get the particulars and details.

Q Do you know where Mr. Deutsch worked at that time?

A Yes, I did.

Q Where was that?

A Jaffee & Company.

Q What was Jaffee & Company?

A A brokerage firm in New York City.

Q Did you telephone Mr. Deutsch at Jaffee & Company?

A Yes, I did.

Q Approximately when was this?

A This would have been two or three days to a week after I had seen him at Combusion Equipment.

Q What did you say to him during this telephone conversation and what did he say to you?

MR. BLOCK: This is a continuing objection.

THE COURT: Yes, indeed.

MR. ROBSON: The same thing for my client.

THE COURT: Whatever is being testified to now will be subject to connection which relates to anyone who was not directly involved in the conversation.

A I asked him for earnings projections as to what the company would do and also more detailed specifics about how the franchise operation was to take place, what was to happen there. What the various forms of income would be from the franchising operation.

Q What didhe say to you in that regard?

A He gave me earnings projections of 2.50 and $5 a share, two to three years out. Two and three years out from that point.

Q What did you --

THE COURT: Just a moment so that the jury can have it better in mind.

You are talking in the language of a broker?

THE WITNESS: Right.

THE COURT: He gave you earnings projections two or three years out?

THE WITNESS: Two and three years out.

THE COURT: Two and three years out.

Could you tell us, tell the jury particularly, what he said to you? I want them to have the flavor of what he said.

A Well, he said that Richard Packing was being built on the order of a McDonald type franchsing operation and that they hoped to have a number of franchises in place developed and sold in a two to three year period, and that he thought earnings by that point would be 2.50 and then $5 a share.

Q With what period of time was he referring to th the 2.50, to the best of your recollection?

A Thatwould have been June of '70. And $5 for June of '71.

Q As for this conversation with Mr. Deutsch, what, if anything, did you do?

A I got Mr. Cohen's phone number from Mr. Deutsch and checked with Mr. Cohen on the prospects for the company.

Q Just one thing getting back to the conversation that you had with Mr. Deutsch. Were any earnings projections given to you for either June 1969 or the year end 1969?

A I believe there was a figure mentioned --

MR. SEGAL: Objection, your Honor. The witness knows or he doesn't.

Q To the best of your recollection?

THE COURT: Yes what is your recollection?

THE WITNESS: Roughly a dollar a share.

Q After the telephone conversation with Mr. Deutsch, what, if anything, did you do?

A I then called Milton Cohen in St. Paul and asked him --

MR. BLOCK: Just a second. I am going to object to this as not having a proper foundation, your Honor.

THE COURT: Yes.

MR. FEFFER: My next question, your Honor, is if he can identify Mr. Milton Cohen. If you want me to do that, I will do that.

THE COURT: Did there come a time subsequently when you came face-to-face with a gentleman whom came to know as Milton Cohen?

A Yes.

THE COURT: Do you see that gentleman in the courtroom?

THE WITNESS: Yes, I do.

MR. BLOCK: We will concede the identification.

THE COURT: Now, relative to that conversation that took place before the fact, before you actually met the man, I gather it was you who placed the call?

THE WITNESS: Yes.

THE COURT: Do you recall what number you called?

THE WITNESS: I dn't recall the actual phone number except the area code was 612, which was Minneapolis-St. Paul area code.

THE COURT: When you got someone on the other end of the line, did you ask for anyone in particular?

THE WITNESS: I asked for Milton Cohen.

THE COURT: And a voice came on the phone?

THE WITNESS: Yes.

THE COURT: And you later met Mr. Cohen, who is a defendant in this case?

THE WITNESS: That is correct.

THE COURT: Can you tell us whether that voice which came on the phone back in 1968 was the same voice as you later came to associate with the gentleman you know as Milton Cohen?

THE WITNESS: Yes, it was.

MR. FEFFER: Very well, sir.

MR. SEGAL: This is subject to connection.

THE COURT: Yes, indeed. It is subject to connection as to Mr. Deutsch and Mr. Duboff.

Q What, if anything, did Mr. Cohen say to you during the course of that conversation and what did you say to him?

A Well, Mr. Cohen reiterated what Mr. Deutsch had

dhbr 10 Deane-direct

said about earnings projections. Also mentioned that the Status Marketing was going to be set up and developed to package and sell the franchise units and that within a month or two he was going to be in New York and would like to sit down and talk to me about the company.

Q Did you have any further conversation with Mr. Cohen relative to financial information?

A Yes, I did. I asked him for the current financial statements --

MR. BLOCK: Is this on the sme occasion.

MR. FEFFER: Yes.

THE COURT: In other words, you are now recounting just one long distance telephone conversation that you made in, oh, I guess the summer of 1968; is that right?

THE WITNESS: Right.

THE COURT: Go ahead.

A I asked him for the current financial information and to be put on the list for all subsequent financial statements and other financial information that might be avaialble on behalf of the company.

Q Pursuant to this request, did you receive any financial information?

A Yes, I did.

Q I show you Government's Exhibit 1 for identifi-

cation. Can you identify that, Mr. Deane?

A Yes. That was the --

Q Is that the information?

A That was the statement that I received.

MR. FEFFER: The government offers 1 for identification.

THE COURT: Did you receive that at some date subsequent to this telephone conversation?

THE WITNESS: Yes. It was considerably after the phone conversation.

MR. ROBSON: Noobjection subject to connection.

THE COURT: Very well.

MR. SEGAL: I have no objection.

THE COURT: Same as Mr. Robson?

MR SEGAL: Yes, your Honor.

THE COURT: Same ruling. Mr. Block?

MR. BLOCK: I haven't seen it.

No objection

THE COURT: Received. Received subject to connection relative to the Messrs. Deutsch and Duboff.

(Government's Exhibit 1 was received in evidence.)

xx

MR. FEFFER: May I pass this to the jury, your Honor?

THE COURT: Yes, you may.

Do you have any more of them?

MR. FEFFER: No, your Honor, that's the only one.

THE COURT: It would be helpful to have more than one.

MR. FEFFER: We have the later ones we discussed.

THE COURT: No, I'm talking about this exhibit.

BY MR. FEFFER:

Q I believe you made reference to a prospective meeting --

THE COURT: No, it is my practice to wait until each member of the jury has had a chance to examine, because I want them to be able to study the exhibit and then to devote their complete attention to the testimony of the witness.

MR. FEFFER: I'm sorry, your Honor.

(Pause.)

Q I believe you last made reference to a possible meeting with Mr. Cohen in New York City, is that correct?

A Yes.

Q Did you in fact meet Mr. Cohen approximately a month after a telephone conversation?

A I would say a month to a month and a half after the conversation, yes.

Q Where did this conversation take place?

A At the offices of Status Marketing Corporation, which were in a brownstone on 38th Street, Manhattan.

Q Can you tell us who was present at that meeting?

A Mr. Deutsch, Mr. Cohen, and a Mr. Ward.

Q Who is Mr. Ward?

A Mr. Ward was the President of Status Marketing Corporation.

Q Can you tell the Court and jury what Status Marketing Corporation is?

A That was a company that packaged and sold franchising operations, including the Circus Wagon for Richard Packing.

Q Can you tell the Court and jury what Mr. Cohen said to you during the course of this meeting?

MR. ROBSON: If your Honor please, I ask that be taken subject to connection so far as Mr. Duboff is concerned.

THE COURT: Yes. In this case Mr. Deutch and Mr. Cohen are present, and it will be received against them. Duboff doesn't seem to have been present and therefore as to Mr. Duboff, the substance of this conversation will be taken subject to connection.

A First of all, He showed me a mock up of the Circus Wagon itself, a picture of the Circus Wagon franchise unit and the sign that was included with it. The sign was a large clown that was on stilts, towering high above the franchise unit itself juggling hamburgers.

In addition to that, he mentioned that they were going to develop a franchising concept along the circus theme which would be differentiated from and unique from McDonald's franchising concept, in that it would utilize certain very fast moving high profit items in addition to McDonald's basic menu, which included hamburgers, hot dogs, french fries, Coke and root beer, and some of those products were peanuts, popcorn, cotton candy and stuffed circus animals.

Q Was there any reference to the profit from these items?

A Yes. It was mentioned that, one, they would be very high profit items and that they would be faster moving items than the McDonald's standard menu.

Q Did Mr. Deutsch say anything to you during the course of this meeting at Status Marketing?

A There was one other item Mr. Cohen mentioned, first.

Q I'm sorry.

A The take-out windows themselves were in the form of a circus wagon, and the concept was to also put actual circus wagons outside of the unit and when a visiting circus or fair came to town, have live animals in there so that the children would be attracted to the unit itself.

Q Did Mr. Deutsch say anything during the course of this meeting?

A Yes, he did.

Q Will you tell the Court and jury what he said?

A Mr. Deutsch said he was in the process of building a company substantially similar but somewhat unique from McDonald's. He was going to, through acquisition, build the meat business several fold and, in addition to that, expand the meat business via integrating it with the Hamburger patty business Richard was already in and then to expand the meat business and maintain sizeable profit margins in that area due to the fact that they were

THE COURT: Mr. Segal?

MR. SEGAL: I have no objection, your Honor.

THE COURT: Received.

(Government's Exhibits 11A, 11B and 11C, for identification, received in evidence.)

MR. FEFFER: Your Honor, at this time I would like to pass just the photographs to the jury, to save time.

(Pause.)

BY MR. FEFFER:

Q I direct your attention to approximately September of 1968. Did you have a conversation with Mr. Deutsch --

MR. SEGAL: Objection, your Honor. I don't think we ought to have leading at this hearing.

MR. FEFFER: I have to fix the date, your Honor.

Q Did you have a conversation at that time with Mr. Deutsch?

THE COURT: You may answer.

A Yes, I did.

Q Can you tell the Court and jury where that conversation took place?

A IT would have been on the telephone.

Q What did you say to Mr. Deutsch and what did he say to you?

MR. ROBSON: Subject to connection, if your Honor please.

THE COURT: Yes, subject to connection as to Mr. Duboff and Mr. Cohen.

MR. SEGAL: Your HOnor, may we have the source of the telephone call?

THE COURT: Yes. This is September --

THE WITNESS: 1968.

THE COURT: Who called whom,if you recall?

THE WITNESS: I believe I called Mr. Deutsch, and I stated I had checked the company out as thoroughly as I could through him, Mr. Cohen and Mr. Ward and that I thought it was a very interesting situation and I was interested in stock, both for myself and my customers, and since there was such a small number of shares outstanding, I said "If you see any stock, please show it to me."

Q Thereafter did you commence purchasing Richard Packing Stock?

A Yes, I did.

Q Will you tell the Court and jury, and I will limit this to 1968, '69, how didyou purchase shares of

Richard Packing stock?

A At that time I bought most of the stock through a market maker or brokerage firm called Kelly, Andrews & Bradley, in New York City. A Mr. Bernie Shwidock, or his assistant, Jerry, would call me when stock was available and I would take it either for myself or my customers, or both.

Q Do you know approximately how many shares of Richard Packing stock you bought for yourself and/or for your customers over the period of the next year or so?

A Approximately 8 to 12 thousand shares.

MR. SEGAL: May we have the period of this purchase fixed?

THE COURT: If you can; when did you begin buying and during what period did you aggregate 8 to 12 thousand shares?

THE WITNESS: Starting in July of 1968 through all of 1969.

THE COURT: So that by the end of 1969 you had accumulated some 8 to 12 thousand shares?

A That's correct.

Q This would be for yourself and your customers?

A Correct.

Q Will you tell the Court and jury who initiated the call and what was said by yourself and what was said by Mr. Deutsch?

A I initiated the call and asked Mr. Deutsch if St. Croix Associates bought a sizable amount of Richardson Packing and some of his other stocks, how could they be assured that they would be able to get out of the security, since the market was very narrow, or thin, and there were not very many shares outstanding.

Q What did he say to you?

A He said to me that "Hugh, don't worry. I can get your or your customers out of any stock that you want to sell."

Q I am going to direct your attention to January of 1969.

Did you have an occasion to telephone Mr. Deutsch at that time?

A Yes, I did.

Q Will you please tell --

MR. POBSON: When was that?

MR. PEFFER: January '69.

Q Will you please tell the Court and jury what you said to Mr. Deutsch and what he said to you during the course of that phone conversation?

A I said to him that both I and some of my customers were concerned because Richard Packing stock had dropped from about -- well, from the early 30's to, roughly, the mid 20's, and some of my people were thinking of selling out, and Mr. Deutsch said to me, "Hugh, don't worry. Big things are happening here. We are about to close on Value Line," which is a large mutual fund and they were about to take a sizable position in the company, "And I want the stock at 28 to 30 and ultimately much higher, and I suggest that you buy more, and I am going to buy more behind you."

Q What did you do as a result of this conversation?

A Over the next several weeks I bought several hundred shares of stock.

Q Again, will you tell the Court and jury how you purchased these shares of Richard Packing stock?

A At that time I would receive phone calls from Kelly, Andrews & Bradley, either a Mr. Shwidock or his assistant, Gerry, and most of the stock was purchased as a result of their offering.

Q I am going to direct your attention now to the latter part of 1968.

Did you have an occasion at that time to go to Denver, Colorado?

A Yes, I did.

Q Where did you go in Denver, Colorado?

A I went to a company called Financial Programs.

Q What is Financial Programs?

A It's a complex of about five mutual funds.

Q Whom did you speak with at Financial Programs?

A A Mr. Robert Anton and a Mr. Jack Hurley.

Q Who was Mr. Jack Hurley?

A Mr. Jack Hurley was a portfolio manager who ultimately became portfolio manager of Financial Venture Fund.

Q And Mr. Robert Anton?

A He was another portfolio manager for one of the other funds there .

Q Can you tell the Court and jury what you said to Mr. Hurley and to Mr. Anton in Denver, Colorado?

MR. SEGAL: Your Honor, I take it this is subject to connection?

THE COURT: Yes, it is.

Let me be sure of something: At this conversation were any of the three defendants here on trial, Mr. Cohen, Mr. Deutsch or Mr. Duboff -- were any of them present?

THE WITNESS: No, your Honor.

THE COURT: Then this conversation will be admitted

subject to connection as to all defendants.

Go ahead.

MR. ROBSON: Your Honor, may I ask a question?

The witness was asked to state what he said to them. I don't object to that. If he is going to be asked what they said to him, I object with respect to at least one of them and I am not sure I want to state the reasons on the record, but if your Honor will read the indictment, you will see why I object as to one of them.

MR. PEFFER: I will not be asking for conversations from Mr. Anton, your Honor.

THE COURT: That is most important. I don't want to have anything that was said by Mr. Anton.

You just tell us what you said to these gentlemen and then what Mr. Hurley said to you.

Does that take care of your objection?

MR. ROBSON: Yes, sir.

A First of all, Mr. Hurley mentioned to me that he was about to become portfolio manager of a new fund that they were in the process of developing out there.

Q Do you know how much money Mr. Hurley would have available in this new fund for investment purposes?

A At that time, no, because the fund was not effective, and I am not sure the prospectus was ready.

Q Did you subsequently learn how much money?

A Yes.

Q How much was that?

A In the neighborhood of --

MR. SEGAL: Objection.

THE COURT: Let's get the answer.

Q In the neighborhood of what?

A 30 to 50 million dollars.

THE COURT: When did you learn for the first time that this fund had assets of 30 to 50 million dollars?

THE WITNESS: Well, it would have been in the spring of 1969, because it was at that point that I think I was shown a prospectus as to roughly what the amount was.

Q Going back to the conversation with Mr. Anton and Mr. Hurley, can you relate to the Court and jury what transpired?

A Mr. Hurley mentioned that he was going to head a new Venture fund at Financial Programs and that he would be interested in emerging, high-risk, high-growth-potential type securities, and he asked me if I knew of any items or any people that could help him with what he was interested in.

Q What did you say to him?

A I said to him that there was a company called

Jaffee & Company that had had a very fine record with a number of extremely unusual stocks, starting with Solatron Divisions, Leasco Data, and they were in the process of building a company called Combustion Equipment, and now they were specifically interested in a company called Richard Packing, which Mr. Deutsch was really behind and trying to build.

Q Following this meeting, did you have occasion to speak with Mr. Deutsch on the telephone?

A Yes, I did.

Q Did you initiate this conversation?

A I believe I did.

Q What did you say to Mr. Duetsch?

A I mentioned that Mr. Hurley, in particular, in Denver, seemed very interested in what Jaffee and he were doing.

Q Did you have an occasion to return to Denver, Colorado, in the late part of February 1969?

A Yes, I did.

Q Did you see Mr. Hurley on that occasion?

A Yes.

Q Mr. Anton?

A Yes.

Q Thereafter did you have occasion to go to Los

to February of 1970. Did you have an occasion to telephone Mr. Deutsch at that time?

A Yes, I did.

Q Will you tell the Court and jury what you said to Mr. Deutsch and what he said to you?

A I said to him that the St. Croix Associates --

MR. SEGAL: Your Honor, I am going to object to anything in this time period. It is outside the purview of any charge.

MR. FEFFER: February 1970?

MR. SEGAL: That is correct, your Honor.

THE COURT: Overruled.

Q Go ahead Mr. Deane.

A I said to Mr. Deutsch at that time that my largest account in Ricahrd Packing, St. Croix Associates, was very concerned because they had not received the June 30, 1969, annual report, and that they could not evaluate the financial position or condition of the company relative to the 200 franchises that were supposed to have been sold at that time, and been able to project meaningful earnings, and that they were nervous and concerned about the stock.

Q Was there any reference to the financing of Richard Packing?

MR.ROBSON: If your Honor please, I object to this constant leading. There is a proper way, and I am sure Mr. Feffer knows it, to ask a question about a conversation.

THE COURT: Sustained.

Q Was there any further conversation, Mr. Deane?

A. Yes, there was. Mr. Deutsch said, "Don't be concerned, Hugh. Forget about the annual report. It is not signfiicant. I have 15 to 20 million lined up to handle the 200 Richard -- the Circus Wagons that we have sold."

Q What did you say to him?

MR. BLOCK: I am sorry, just a second. I didn't get that.

THE COURT: Let me have the reporter read it back.

(Read.)

Q Would that be Circus Wagon franchises?

A Yes.

MR. ROBSON: 15 or 20 million what?

A Lined up to finance the Circus Wagon franchise.

Q What did you say to him in response to this?

A Well, then I told him I'd have to call him back. I called St. Croix Associates, related the information to them. They stated to me that they still wanted to

sell the stock.

So I called Mr. Deutsch back and told him that St. Croix Associates wanted to sell 4,000 shares of stock to get me a bid.

Q Then what happened?

A EitherMr. Deutsch put me on hold or said he'd call me back and he said New Dimenions would pay 37 for 4,000 shares.

Q What is New Dimensions, Mr. Deane?

A It is a securities -- brokerage firm located in New York City.

Q Did you in fact sell the 4,000 shares to New Dimensions Securities?

A Yes.

Q You mentioned an annual report. Did you have discussions with Mr. Cohen with respect to an annual report?

A Yes, I did.

Q When was the first discussion that you had with Mr. Cohen?

A Roughly August of 1969.

Q What did you say to Mr. Cohen and what did he say to you and where did the conversation take place?

A It would have taken place on the telephone.

I said to him that not only I but several of my customers were a little concerned because they had not received the annual report that was due in July or August of 1969. And we were wondering where it was. And I asked about it constantly.

Q Did you have an occasion to speak to Mr. Cohen again on the same subject?

A Yes.

Q Approximately how many times?

A I would say six to eight times.

Q Did the conversations take place on the telephone?

A Yes, they did.

Q What did Mr. Cohen say to you in response to these requests of yours?

A Well, in one instance they were changing accountants and they hadn't been able to get certain investors or situations valued, and, you know, it will be out, it is coming out and so forth.

Q How long were you a shareholder of Richard Packing Company, Mr.Deane?

A Roughly a year and three-quarters.

Q Did you ever receive notification of any type, verbal or written, as to an offering of Richard Packing shares?

A No, I didn't.

MR. PEFFER: At this time, your Honor, the government renews its offer of 13-A and 13-B.

THE COURT: When was the last time you asked either Mr. Deutsch or Mr. Cohen for a Richard Packing Company annual report?

THE WITNESS: It would have been March or April of 1970.

THE COURT: What annual report did you request?

THE WITNESS: The June 30, 1969 annual report.

THE COURT: Did you ever request the 1970 annual report of either of them?

THE WITNESS: I wouldn't have had occasion to, but -- because after mid June of '70, I really had no further interest in the company.

THE COURT: I will continue my ruling on Government's Exhibit 13-B.

Relative to 13-A, did there come a time when you did receive a copy of the 1969 annual report?

THE WITNESS: Yes, I did.

THE COURT: When was that?

THE WITNESS: I believe it was April of 1970.

THE COURT: You might show the witness Government's Exhibit 13-A for identification.

****

MR. ROBSON: I am not sure that it is necessary to go into very great length to make the point I have got to make here.

Basically, it is my position, and I believe that it is joined in by counsel for the other defendants, that a defendant is entitled to be confronted with some specifity on the charges being made against him when he comes to trial.

We have an indictment which has not one word of reference to any misrepresentation with respect to the financial condition of Richard Packing with respect to its projections, with respect to its business operations. The only misrepresentations which are referred to are misrepresentations allegedly made in the offering circular with respect to certain relationships.

Now, through the statements by the government during the testimony of Mr. Malmon and now through the testimony of Mr. Deane, it appears we are going to be confronted with allegations that there were misrepresentations with respect to the earnings projections of the company, with respect to funds that Mr. Deutsch says the company had available to finance with franchises, with reasons why the annual report was delayed, with whether or not the accountants were in fact having difficulty with

the inventory on that particular date, with whether or not Richard Packing had in fact said that they had acquired the Dune Buggy Company, and with respect to the alleged number of dune buggies which were sold. Also we had reference to the number of franchises which were allegedly sold.

So we now have five or six major areas of alleged misrepresentations, and I can only assume if there is any relevance to Mr. Deane's testimony at all, that it is for the purpose of establishing that statements made to him were false. * * *

We now have six completely new areas of misrepresentation as to which not a hint is contained in the indictment. We are now expected to defend against this kind of charge, and Mr. Feffer, I know, is going to say that he showed us lots of documents, four or five cartons full, and if we had a certain amount of ingenuity we probably could have guessed from some of the documents which he showed us last week, two or three, that they might be going into this.

But that is not how a defendant is required to be advised of what he is facing in an indictment.

Your Honor, if this were a civil complaint there is no question in my mind that it would dismissed for lack

dhbr 15

of specificity.

Now, the Courts have allowed a certain leeway in terms of alleging a crime in the terms of a statute but I don't see that that is a basis for compelling a defendant to sit here in court and, for the first time, learn what it is he is being charged with. I have no idea wnether 200 dune buggies were sold or weren't sold at this point. I don't know anything about dune buggies. I had no idea that I was ever going to be required to know anything about dune buggies.

I don't know when these and all reports were prepared or what the problems were. I never had any reason to suspect there would be any question about it.

Your Honor, I don't know what more I can say. I think your Honor understands thoroughly what my point is.

MR. BLOCK: If your Honor please, I not only join in Mr. Robson's motion, but I would also like to move to strike out the testimony of Mr. Deane in its entirety as dealing with matters that are wholly irrelevant to the issues involved in this case.

I would cite, your Honor, the case of Stirone v. United States, 361 U.S. 212, decision rendered in 1960, in which the Supreme Court of the United States reversed a conviction -- if I may tell you briefly what the

dnbr 15a

case involved, that was a case involving a Hobb's Act situation in which the defendant was alleged to have interfered with interstate operations in connection with certain construction jobs by interfering with the shipments of sand for the construction job.

In the course of the trial, there was proof adduced by the government that he also interfered with the shipments of steel, and the Supreme Court said that that testimony was completely inadmissible in light of the charges in the indictment, and they reversed. Essentially they held that it was a fatal variance. So on that basis, and because of the multiplication of issues, which are not even hinted at in the indictment, I not only join in what Mr. Robson said, but I move to have the testimony of Mr. Deane stricken in its entirety because I don't think it has any bearing on the issues involved here.

THE COURT: Mr. Segal.

MR. SEGAL: Your Honor, I would join in the motion to strike and I think that at this point, though it seems unusual for a group such as you have before you to claim surprise in the course of a case like this, I think if there is any one time that as a case unfolds there is a legitimate claim to such a statement, it is now.

As this information reads, the information is quite specific as to a particularly narrow area that we could address ourselves to. There has been request here and repeated request, for disclosure on the part of

the government, both in the bill of particulars and in argument made in connection with such. At all times the government indicated that the statute itself sufficiently apprised us of the crime with which we were charged. Now, what is happening and I think what is particularly germane here, it is not offered that a legitimate claim can be made about when it is that jeopardy attaches in a particular area.

We have five indictments and I must say with the five indictments I am not sure that the government's introduction of proof from material that has been gleened from five separate or five coordinated investigations -- we have not been able to gleen where it is we are in a period and we are in a structure that we can defend against.

Material obtained from investigations which relate to other stocks at other times, other places, and that is all being brought in here on the basis of which there have been false and misleading statements. If the government knew this, they could have apprised us of this.

We now have a situation with regard to dune buggies, we have a situation with regard to the Richard Franchising, which has suddenly come into this case as though it was the same as Richard Packing. The government could have told us this.

We stand out in the hall, your Honor, during the recess and we try to determine what, if any, documents we have available, and we don't have documents available here. Whatever documents we would have on these new topics are somehow in another section, in Minneapolis, and this is not a New York firm. So what we are talking about is a defense which now suddenly, at the 11th hour, must reach out and cross examine a man who is on trial on the basis of materials we could have known about but did not know about.

I have prepared before that we we are getting into is a possible amendment of the information we have, an amendment by the government, almost on an ad hoc basis, as they determine that another piece of evidence would be germane to what it is they are talking about and I would urge to the Court that that is not the way a criminal trial should be tried nor is it a criminal trial that can be kept within reasonable regular bounds.

If we had to prepare ourselves as we did against the offering circular, we would be ready to defend the case. At this point, when we have to defend against the activities and projections of something like Richard Franchising and now to determine whether or not we have materials which would confirm the fact that either we did

or did not have 200 franchises leased out as this witness said was said to him, we might be in a position to cross examine adequately or at least to defend, but we are getting into a much broader area than anticipated and an area where we are not sure where jeopardy is attaching and for what particular crime.

These are not either cognizable under the similar act theories nor are they cognizable under any theory I can see except one in which the government chooses to expand and amend its indictment to suit its purposes for the moment.

When we have a situation like an annual report, if that was something we had to defend against, the government should have said such, and if we had that knowledge, it would be possible at that point to have information available to us and handy for our use which could be used to examine this witness, and background material on this witness in terms of these particular situations.

On the other hand, where we come into a case thinking that we are being charged with false and misleading statements that are made in connection with an offering circular and now we are charged with three or four different areas of false and misleading statements, all of which could have been told to us at an earlier

time, we are at a loss.

Now, I suppose the neatest way is to restrict the government's proof. The least that we could request at this time, if the motion to strike that testimony of Mr. Deane is denied, is for a continuance as of this time so that we might be able to prepare against what is an over-expanding kind of concept that we are faced with in the courtroom.

It is quite serious that we have materials available to us which can be used for the purpose of cross examining this witness, and cross examining him on the basis of information which he has given as part of his testimony, and I would respectfully request, therefore, that either the testimony be stricken or that the defense be granted additional time within which we can begin to meet the charges that are made here.

I also think it might be germane for the government at this point to give another amended bill of particulars so that we would at least know for the future where we are, but as of this point, where we are dealing with the document that provoked this argument, we are without the wherewithall merely because we have not been so informed that we would have to defend against an annual report such as the one that the government now proposes

to introduce evidence and not, your Honor, interestingly enough, is this document, Exhibit 13A being put in because it is false and misleading; the government chooses to put this document in because they are in effect rebutting the propriety of their own case. They are saying that this document proves that what this witness has testified to was wrong.

In effect, they are trying to shore up his testimony as if they were cross examining the defendants themselves, introducing this document not as it should properly be introduced at this point, but the fact that it was misleading -- they are not syaing that, they are saying this document is okay and we didn't have anything to do with misleading anybody about the '69 report but, rather, this document rebuts the testimony the witness has given.

I think it is an ingenious technique the government is employing. The government puts a witness on the stand and says projections will be a dollar, $2.50 and $5.00 and now they put in a document which proposes to show the actual result was five cents earning per share. They intend to argue from that that we were misleading this man.

I think that at this point Government's Exhibit

13A is not admissible and I would respectfully move for the relief I have requested.

MR. ROBSON: Your Honor, I just briefly skimmed through Mr. Deane's grand jury testimony and there is not one word I am able to find in that grand jury testimony with respect to any of these alleged representations. He is not asked and did not testify that anyone told him there were projections of $2.50 a share, did not testify about the alleged conversation with Mr. Deutsch and the $15,000,000 in cash or the dune buggies or 200 dune buggies being sold.

All of this testimony is being adduced now for the first time and represents an attempt by the United States Attorney to found an information or indictment on something entirely different than that which was before the grand jury and there are cases, and I have not completed a memorandum on the subject, which hold that a case may not be founded on evidence which was not before the grand jury when we are talking about different theories.

I realize the grand jury didn't have to hear every aspect of the case, but when the grand jury alleges a misrepresentation which in fact was never presented to it, then I think it is unfair at this time to allow the Assistant United States Attorney to determine what the

charge ought to be.

MR. BLOCK: I would like to add one short word, your Honor. I think it is very significant that -- if I could direct your Honor's attention to paragraph 11E of the information --

(Continued on next page.)

THE COURT: I am looking at it right now.

MR. BLOCK: This, I think, points up what we are saying, although in a somewhat different context. It says, "Commencing on or about March '69, Bernard Deutsch and Stanley Duboff, the defendants, for the purpose of causing the price of Richard Packing common stock to rise in the open market, induced certain mutual funds in Denver, Colorado," and then it names certain mutual funds, "to purchase Richard Packing common stock through Jaffee & Company, a registered broker-dealer where they were registered representatives," and then it goes on and omits any statement about false and misleading representations. It doesn't say that. That was where it should have been said, if that was going to be the thrust of the Government's case, instead of which it goes on to talk about "induce them to purchase from accounts over which they exercised control or in which they had a beneficial interest," and so forth.

So that this is dehors the charges, your Honor.

MR. SEGAL: Your Honor, we have the St. Croix fund that this witness testified to, and that is nowhere stated in this information. They have named the five Denver funds and that was the object, supposedly, of the activities of these defendants.

Now, apparently, this fund, too, is somehow misled into either buying the stock or keeping it, or selling it when it is too late, and that specifically, even with this Paragraph 3, would be a Government amendment of a situation that was nowhere named before.

THE COURT: Mr. Feffer?

MR. FEFFER: Yes, your Honor.

Your Honor, I think it is necessary at this point, even though it may be a little cumbersome, to read in certain sections of this information. Mr. Segal makes the comment that the misrepresentations that are alleged in the information relate to the 10,000 share offering and I would like your Honor to look at Paragraph 8 of the conspiracy count, Paragraph 9 of the conspiracy count, Paragraph 10 of the conspiracy count, Paragraph 11, and essentially, your Honor, Count 1 charges the defendants and their co-conspirators with employing devices, schemes and artifices to defraud purchasers of Richard Packing common stock, with obtaining money by means of untrue statements of material facts, and omissions to state facts necessary to be stated in order to make the statements made in the light of the circumstances under which they were made not misleading and with engaging in transactions, practices and courses of business which would and did operate as a fraud and deceit

3 rmmch

upon the purchasers of Richard Packing stock.

Your Honor, the law is clear in this Circuit, and we will have a memorandum for your Honor the first thing tomorrow morning, that this Circuit has consistently sustained indictments which merely track the language of the statute in question and, in addition, do little more than state relevant times, places and in approximate terms. Indictments have been consistently upheld in this Circuit on that basis. I will save the citations until tomorrow morning until we have a memorandum before your Honor.

With that in mind, for Mr. Robson to suggest that we are required to list in the indictment or in the information each and every misrepresentation that was made is ludicrous and for him to go further and suggest and keep making references to these four or five boxes of documents which he received which somehow misled him as to what the Government was going to do in this case -- I think it is important to stress again that we agreed to give the defendants a very small number of documents, and I would say that they approximated something like a hundred in number, of just those exhibits which the Government intended to offer at trial, and we told them at that time that we would probably offer less, but these would be all-inclusive.

We carefully gave those to the defendants. Mr. Block picked up his stock, Mr. Segal and Mr. Robson had us give these documents to the defendants themselves in this case. These were given to them and they were set aside for the purpose of being able to work out prior to trial, pursuant to your Honor's instructions and recommendation, any types of objections which could be worked out prior to trial.

So to sit here and say, when we gave them press releases and annual reports, that suddenly with the Government's opening they are misfounded as to what the Government is going to prove at trial is just not true, your Honor.

With respect to Mr. Deane's testimony, Mr. Robson got up in front of the jury and made a speech as to the relevancy. I think certain things should be pointed out in addition to what Mr. Deane said as to projections: The conversation with respect to Value Line, when they were going to make a substantial purchase of Richard Packing stock and Mr. Deutsch told them should any customer of his be required to sell out that that would be no problem, Mr. Deutsch would handle it, and when he told Mr. Deutsch in 1970, in February of 1970, that Value Line was in fact going to sell out, Mr. Deutsch's response was, "Oh, no, don't do that. You don't need an annual report. We have

approximately $20,000,000 in financing lined up."

MR. ORENSTEIN: Value Line had restricted stock. How could they sell out?

MR. FEFFER: If I said Value Line, I'm sorry. I meant St. Croix Associates. That was the purpose of that testimony and it is certainly germane and goes to the state of mind of Mr. Deutsch and what he was doing with Richard Packing stock during that time.

These types of conversations, your Honor, are obviously critical to the Government's case and that this whole line of testimony should be stricken is ridiculous. He is named in the indictment and information as a co-conspirator.

The final thing is this idea of jeopardy attaching here. How the defendants will be in jeopardy because the Government shows projections of Richard Packing stock and the number of franchises that were said to be solved during a period of 1968 and 1969 -- how that places them in jeopardy in cases relating to Acrite, Frigatemp, Integrated Medical, is beyond me. These are facts peculiar to Richard Packing and cannot place the defendants in jeopardy with respect to the other trials they are now facing.

THE COURT: Thank you.

The Court's first reaction is that the information charges manipulation of Richard Packing Company stock, and I would think on that basis alone Mr. Deane's testimony should not be stricken.

According to my notes of his testimony, so I can put this matter into context, he was persuaded to purchase some 8 to 12 thousand shares, which is a substantial amount of Richard Packing Company stock, for his account and for that of his customers, from July of 1968 through the end of 1969, beginning with a purchase, as I remember it, in '68, and he acquired more and more stock, as I heard his testimony, he panicked a bit when the stock dropped from the 30's into the 20's, he sought reassurance from Mr. Deutsch, who said, according to my notes and recollection, "Hugh, don't worry." Mr. Deutsch then told him about Value Line and it would appear to me that the purpose of telling someone that Value Line was coming in and purchasing restricted stock for 28 would be to reassure him so that he would hold and wouldn't dump in what was a thin market to cause the stock to go further down.

29/74 6b

It would seem to me, the way I have heard his testimony, Mr. Deutsch, in a series of conversations, was trying to persuade Mr. Deane and his clients, among them his client, St. Croix Associates, not to sell, to hold their stock, and of course one of the purposes that you try to establish in a manipulation -- the allegation is that one of the things the alleged manipulators would try to do is either to keep those holding their stock from dumping it and causing the whole thing to collapse -- I see that was what was being done here.

"Forget about the annual report," said Mr. Deutsch, according to Mr. Deane, "It is not significant. I have 15 or 20 million dollars lined up to finance the purchase of Circus Wagons,""This is a venture that is really taking off. Hold onto your stock."

Shortly thereafter, we have more testimony that he asked Mr. Cohen for the 1969 annual report several times over. It seems to me that if the annual report had been furnished and if it had shown miniscule earnings, this would have been an incentive to him to do more than sell 4,000 shares; it would have resulted, I should think, in his trying to dump almost all of the 8 to 12 thousand shares which had been purchased, and I see this as being part and parcel of a conspiracy,part of which was to manipulate,

part of which was to hold stock where it was, so that the market would not collapse.

If you tell me this was not part of the manipulation, I would like to hear it, but I see it that way.

I see withholding bad financials as a means of keeping people in and ultimately as a means of manipulating the stock by holding the stock where it was and holding the price up, and that is part and parcel of manipulation. Forget anything else; doesn't the information charge a manipulation and isn't this what a withholding of the true financials is effecting? If I am wrong, I want to hear why and how I am wrong, but I am talking now about the gut of the charge here, which, as I see it, is a manipulation of the price and a manipulation of the stock, in this case Richard Packing stock.

MR. BLOCK: May I try to answer, your Honor?

THE COURT: Of course.

MR. BLOCK: Well, you know, there are a million different ways on the basis of information I have acquired over the years of manipulating securities, and I think our quarrel here is with the way in which we are charged in the indictment with having attempted to manipulate.

Now, suppose, your Honor, that for example -- I know that one of the things that is done in a manipulation

3 rmmch

is only to sell on the ~~uptake,~~ upticK for example. That is one way.

Now, if that were to come into this case, it seems to me that should have been charged. I have tried stock fraud cases in which that kind of manipulation was specified.

Here in Paragraph 11-e, they specify the way in which the manipulation was being done. They are now proving other ways, and that is where our quarrel comes along with the way this indictment has been drawn.

THE COURT: It seems to me that if they can tie their proof into a manipulation of the price of this stock, they have put you on such notice in the information to undercut the argument which Mr. Robson made in the first instance, which basically is (a) they didn't put any of this into the grand jury -- I don't really see that as a problem -- but (b) the thing that has concerned me these last couple of days is the matter of surprise.

Absent a claim of manipulation and absent being able to tie this into manipulation, I might be persuaded in the direction of the arguments you three gentlemen have made, but I think this is just another way of proving a charge. The charge is manipulation. How they go about it, the means by which they carry out the manipulation is a matter

of proof.

If they operate in three or four different ways and the indictment or information alleges one means, I don't see a preclusion absent their having precluded themselves in their bill of particulars. That is something I asked the other day. Unfortunately for the defendants, they are not precluded from anything in their bill of particulars. I looked at it again while you were arguing, as a matter of fact, and I would suggest, as long as they equate their proof with ultimately proving manipulation, they are proving charges alleged in the information and I must permit them to do it.

That is the way I see it. If I am in error, you had best correct me now. I will think about this overnight, but I would like to have some input from you gentlemen on how I have erred in reaching the conclusion that this goes to prove the charge of manipulation, and if it does go to prove that charge, then it is relevant, material and properly admissible.

MR. ROBSON: I will not presume to say to your Honor you have erred, although Mr. Feffer doesn't seem to find any difficulty in calling my position ludicrous and ridiculous.

THE COURT: No, I don't, or I would not have

5 rmmch

articulated my thinking the way I have. I don't regard it as ludicrous and I don't think Mr. Feffer does, either.

MR. ROBSON: I think that the argument of surprise or the fact that the evidence goes beyond the indictment applies equally whether you attribute the evidence to proof of a misrepresentation or proof of manipulation, because in both cases the indictment, after alleging very generally what Mr. Feffer read to you, is nothing but a broad, general repeat of the words of the statute, but the indictment then goes into certain specifics.

We came into this Court and asked for specifics, in what way were we alleged to have committed a crime of scheme or enter into a device or artifice to defraud, and we asked also how did we misrepresent? We were told, or the Court was told, and we were told through that --

THE COURT: Read the indictment.

MR. ROBSON: I have read it.

THE COURT: That is what they say.

MR. ROBSON: They said they set forth means paragraphs and from those means paragraphs we can tell what they are charging we did.

They say we controlled certain accounts and bought and sold stock. There is certain portions of Deane's testimony that I think would be appropriate, where he says

he bought through Kelly, Andrews & Bradley certain shares and that could conceivably be tied up. I can see that fitting into this indictment, but where Deane suddenly comes along and says he wanted to sell from St. Croix Associates stock and Mr. Deutsch said, "Don't worry about it. We have some financing," that is nowhere referred to directly or indirectly in this information. There is no way that anybody reading this information could conceivably be prepared to face that kind of allegation.

We know that we are supposed to have dealt with accounts which we controlled; we are supposed to have induced the mutual funds in Denver to buy stock in order to restrict the supply. We are prepared to meet those charges, but we never had any idea this was the kind of manipulation we would be charged with.

If Mr. Feffer says all they have to do is alleged in the words of the statute, but if they had an indictment that didn't contain the means paragraphs, they would have been compelled to give a lot for --

THE COURT: I was persuaded by the statement they have made and we have this extensive indictment and they said just look at the means paragraphs.

I have been looking at Mr. Feffer's memorandum of law in opposition to a motion for a bill of particulars

7 rmmch

and I see a statement made in the opening paragraph on the defendant Driesman's motion for a bill of particulars, but I think it is consistent withall, and I would regard one man's motion as covering others:

"The ten-page indictment in this case is a highly detailed document which in itself clearly acquaints the defendant with the charges against him and protects him against another prosecution for the same crime. The means paragraph in the conspiracy count alone spells out the eight separate acts depicting the manner in which the conspiracy was carried out. In addition, the Government has voluntarily consented to provide additional particulars, as well as broad discovery of practically every document in its possession."

An argument can be made from that statement that the Government was going to present additional proof beyond the eight separate acts, and the question before me is whether they were obligated in their particulars to set forth the specific proof which we are talking about here today, and absent their doing that, to be precluded.

They didn't circumscribe themselves in their bill of particulars as such. That is the first question I asked the other day. The question is, does a statement such as the one I have just read lead to the conclusion

that the defendants have been prejudiced and lead to the further conclusion that I should preclude the Government from offering proof in this direction?

I am going to reserve decision on the application. If you have anything you wish to present to me, I will be available first thing in the morning. The jury has been instructed to return at 9:30. If you wish to see me and to present anything to me, I suggest that you do so at 9:15 tomorrow morning. I will be considering the matter further.

At the moment, the Court reserves decision on the applications. Now, the applications which I have before me are basically twofold:

Number one, the Government makes an application to put in the 1969 annual report. Incidentally, from the questions which were asked by the Court of Mr. Deane and his lack of interest in 1970, I don't consider that I have an offer before me now of the 1970 annual report, so I am going to be focusing relating to the Government's offer on the 1969 report, to wit, the fact as to whether notice and adequate notice was given to make this a matter of non-surprise, relevance, materiality. I will consider all those things.

On the other hand, I will consider the defendants' motion to strike Mr. Deane's testimony. I am not, frankly,

9 rmmch

gentlemen, persuaded to do that, nor am I persuaded to grant a continuance, but I am troubled about the Government's bringing in this annual report and I will consider that further.

I will reserve on both of these things. If you want to present anything to me, you will do it by 9:15 tomorrow morning.

MR. BLOCK: Your Honor, may I remind you that you were going to look overnight at the Shwidock grand jury testimony? We have agreed on 3518 and 3519.

THE COURT: If you have it, I will take it, and if you would mark it, needless to say, I would appreciate it.

MR. BLOCK: It is relatively short, your Honor, so that I think you can skim the whole thing.

THE COURT: I will take that with me.

I will reserve decision, then, on the motion to admit the 1969 annual report, the application by the Government to offer that, and the motion to strike, and I will review Mr. Shwidock's testimony in light of the comments which were made earlier today by counsel.

MR. ROBSON: Your Honor, may I make one request on the record? I would like your Honor to ask the United States Attorney whether or not they or the SEC have in

A Right.

Q All right.

When you got these earnings projections, sir, did you analyze them in any way, shape or form?

A Yes, I did.

Q As a result of your analysis, did you come to the conclusion that they were completely impossible projections?

A Not at all.

Q When you analyzed them, did you sit down with pencil and paper?

A Yes, I did.

Q Did you go out to the plant and check?

A I sent -- I had other people check the plant but --

Q All right. You have answered the question. Please, just stay with me and answer the questions and we will get along fine.

A All right.

Q You had people go out and check the plant. You were checking from time to time --

MR. BLOCK: I withdraw that. Just a second.

Q At this time, the agreement with Status Marketing hadn't even been entered into, had it? If when that

agreement with Status Marketing was entered into was on September 26, 1968, there wasn't even any deal with Status Marketing at that time, was there?

MR. FEFFER: Objection. When are we referring to?

MR. BLOCK: I'm talking about the conversations he notes now in July or August of '68.

Q Isn't that correct, sir?

THE COURT: Do you understand the question?

A Status Marketing --

Q I will start all over again. I may have confused you.

What I'm saying is this: Bear in mind that the agreement with STatus Marketing was only entered into on September 26, 1968, right? That's a fact; you accept that, don't you?

A Yes, it is.

Q You remember that, don't you? I showed you the paper this morning.

A Right.

Q All right.

Now, does that lead you to change the dates when you say you talked to Mr. Deutsch and Mr. Cohen about these earnings projections? Wasn't it later? Wouldn't you say if you had any conversations at all it was after they had

entered into the deal with STatus Marketing?

A I think it was beforehand, because I heard some numbers from actually one of Mr. Deutsch's associates of even higher than those figures. Those were the ones that I ultimately could substantiate based upon ultimate projections in both the meat business and in the Circus Wagon franchise.

Of course, that took place later in terms of the actual substantiation of the figures. I could substantiate all the figures to begin with.

I accepted on faith and the basis of the past record of Jaffee & Company and Mr. Deutsch what the earnings projections were to start out with.

As it developed, I then tried to substantiate everything, all the way from the franchises to the franchise fees, every conceivable form of income that was coming into the company, to see if those projections would hold up.

Q So what you are telling us is thatyou got these earnings projections from Mr. Deutsch and Mr. Cohen prior to the time that they had made or entered into the contract of Status Marketing?

A That is correct.

Q In analyzing --

THE COURT: I think this might be a convenient time to take our midmorning recess, Mr. Block, if that is agreeable to you.

MR. BLOCK: No objection.

THE COURT: All right. It is 11:30.

Ladies and gentlemen, we will take a ten-minute recess. Please don't discuss the case among yourselves. Continue to keep an open mind on all facets of the case. We will resume in ten minutes.

(Recess.)

(Jury present.)

THE COURT: You may proceed, Mr. Block.

MR. BLOCK: Thank you, your Honor.

BY MR. BLOCK:

Q Sir, when you engaged in this analysis that you were telling us of Richard Packing Company, when did youfirst start making the analysis of the stock with a view to possibly putting your clients into it.

A You mean substantiating the actual number themselves? I put some customers in on faith, of the projections that were made to me initially.

Q Just a second. Please. You asked me a question and I am answering it.

I said, forget about the statements that you claim were made, I'm asking you when did you first start analyzing the stock? When, in point of time?

A It would have been in probably October, by the time I got around to really starting to analyze the figures.

Q All right. So that that's October of 1969?

A That's correct.

Q Prior to October of 1969, you had invested clients' money in a number of shares in Richard Packing stock ; isn't that correct?

A That's correct.

Q By October of 1968, would you say that you had invested something like, your clients had acquired at your recommendation, something like about 5, 6 thousand shares?

A It could be that high. By the time I finished this examination --

Q No, I'm talking about up to October, 1968 when you start your detailed analysis. That's what I want to know. Is that an approximate?

A I think 4 to 5 thousand shares.

Q 4 to 5 thousand shares.

Is it fair to say, sir, that you had your clients buy 4 to 5 thousand shares of Richard Packing Company stock on your recommendation without your having made an analysis of the company; is that a fair statement?

A That's a fair statement, yes.

Q Right. Now --

A There' s more to it than that, though.

Q All right. You have answered my question.

Now, sir, do you remember --

MR. SEGAL: I ask that the witness just keep his eyes on the question.

MR. FEFFER: What?

about in 1968 you knew that he was a registered representative with Jaffee & Company, didn't you?

A Yes, I did.

Q Let's go to the analys is that you say you made in -- starting in October of 1968. What did you do in the course of your analysis?

A Well, number one, I took the number of shares that were then outstanding, which, as I recall, were 550,000. Based upon the projection of the first year's earnings of roughly $1 a share, Mr. Deutsch had stated that a fairly substantial -- and Mr. Cohen had stated -- that a substantial portion of that was coming from the meat business.

Also, at that point they had mentioned that 50 to 85 franchises were sold. If you take the franchise fee that accrues to Richard's, plus the projected royalty income to the -- from the franchisee, assuming a gross business which they were talking about per franchisee of $250,000, you come up with a royalty income of roughly $75,000 per franchise. And a franchise fee net to Richard's or gross to Richard's before taxes of about $12,500, times 50 to 85 units, and that came up to certainly in excess of $1 a share, particularly seeing that Deutsch thought the meat business would be quadrupled or more by

several acquisitions that he was in the process of making.

Q So that is your whole analysis?

A No. I then also checked into what it cost to acquire the land, lease the facilities, what the equipment would cost, what the fixtures would cost, the franchisee's down payment. I had people check at the plant, I had people ultimately check the various Circus Wagons that were open, monitoring the ones in Los Angeles the ones in Chicago -- the one in Chicago, etc. I mean, we did a lot of detail work.

I also brought a couple of people out to look at the company and talked to various people who also were in a much more knowledgable position about franchises than I was, and that would evaluate them much more fairly.

Q Does that complete your analysis?

A Well, I did a good deal of detail work on the subject when I could get to it.

Q No, I mean, have you outlined, without going into the specific details --

A In general, what I tried to do is set up each year's earnings and establish what the variables were in getting there -- including later on -- the dune buggy operation and the boats that they were talking

about. And I tried to set up the projected figures based upon what was given to me with the variable to get to $1, $2.50 and $5 earnings.

Q I see.

As a result of all of this, were you able to do that?

A It did check out, yes. Based upon the variables that were given to me.

Q In other words --

THE COURT: Let me hear the rest of it.

A Based on the variables that were given to me.

Q Now, sir, let's find out about this $1 a share you were talking about. You say that Mr. Deutsch and Mr. Cohen told you that the company was going to earn $1 a share during fiscal year 1968; is that what you were saying?

A June 30, 1969, they would earn roughly $1 a share, that was the projection.

Q I see. For fiscal 1970, it was going to be $2.50 a share and for fiscal 1971 it was going to be $5 a share; is that it?

A Correct.

Q That's it. All right.

A Right, either selling or leasing.

Q You told us about asking Mr. Cohen for the 1969 annual report, isn't that correct?

A That is correct.

Q In connection with your request there, did you say you had a number of conversations with Mr. Cohen asking for the annual report?

A That is true.

Q Now, when did they start, sir?

A Roughly, August of 1969. That is when they were originally expected to be out.

Q This is a report for the fiscal year ended June 30, 1969?

A Correct.

Q You as an analyst and stockbroker know that a report that is due -- I mean that concludes on June 30, 1969 is not going to be forthcoming for a period of time; right?

A Correct.

Q And the reason you know that is because you know there is a great deal of work that accountants have to do in connection with getting all the figures together, isn't that right?

A That's true.

Q And it takes time?

A Right.

Q Were you informed that Mr. Cohen -- that Richard Packing Company was using the services of an accounting firm that was then known as Lybrand, Ross & Montgomery?

A I think they were about to switch to them, if I remember correctly.

Q Well, for your information, sir, Lybrand, Ross & montgomery were the accountants who prepared the annual report for Richard Packing of 1969, which is Exhibit 13-A in evidence, and I will show you this. You ultimately got this document, didn't you (handing)?

A Yes.

Q Look at it, on the last page, and you will see Lybrand, Ross & Montgomery.

A Correct.

Q You know that in a later year they switched to another accounting firm and that is probably what you were alluding to.

A I see.

I thought -- all right, I didn't realize that. I knew they had switched at some point. I thought it was beforehand.

Q Have you heard on the basis of your experience about Lybrand, Ross?

A Yes, they are considered an excellent accounting firm, one of the top --

Q One of the top accounting firms?

A Correct.

Q And you were aware that Lybrand, Ross & Montgomery, an outstanding accounting firm, or a prominent one, was engaged in trying to prepare the annual report for the fiscal year ended June 30, 1969 for Richard Packing Company, isn't that correct, and you knew that from these conversations that you had with Mr. Cohen when you started looking for the report, isn't that right?

A I knew that some accountant was in the process of preparing it, hopefully, yes.

Q Did Mr. Cohen ever tell you about Lybrand, Ross?

A At some point it was mentioned, yes.

Q By Mr. Cohen?

A I believe so.

Q Yes.

Did Mr. Cohen ever tell you that the reason for the delay in the issuance of the report was because of the farflung operations of Richard Packing Company involving the services of a number of accountants? Do you recall that?

A I recall that he was having trouble reconciling certain statements among accountants, something to that effect.

Q Did you ever hear that he had a separate accountant for the Jamaica operation?

A I didn't know that specifically.

Q Did you ever hear that he had a separate accountant for the St. Thomas operation?

A No.

Q Did you ever hear that he had a separate accountant for the Circus Wagon drive-in?

A I didn't know that, either.

Q Mr. Cohen did tell you, though, when you asked him for the annual report -- did he say the accountants were working on it? Isn't that right?

A Yes.

Q Did you say he told you that it was difficult to get all the accounting records together?

A I would say that is a fair and accurate statement.

Q And there finally came a time when you did get the annual report, isn't that correct?

A Correct.

Q Did you notice in the annual report that -- and I am referring now to the last page and the certificate of

MR. PEFFER: Your Honor, I am having a problem with respect to the time. For example, when did the witness first see the report?

THE COURT: I was hoping to find that out at some juncture, but I am sure Mr. Block has that in mind and will present that in his own good time.

MR. PEFFER: I will ask that a time reference be set for each question, your Honor, so we have an idea of what he is talking about.

THE COURT: Well, let's start with a question. We have no pending question.

Q Didn't you say you got this report sometime around April or May of 1970?

A That is correct.

Q That is your best recollection of when you got it?

A That is correct.

Q What I am asking you, sir, is when you got it, did you read it?

A I looked --

Q Yes or no?

A I looked at it in a broad base way and I was in the process of selling the stock at the time and really had no more interest in the financial statements of the company at that point in time.

Q But it would, would it not, be of sufficient size or of sufficient importance for at least Wood, Walker to gather material on the company, whether or not it was published over their letterhead?

A I would say so, yes.

Q Was it done in this instance?

A I think it may very well have been done.

Q As part of your function in recommending stocks to institutional investors as well as private investors, I take it it is also incumbent upon you to keep updating your data so that you stay as current as possible with the affairs of that company?

A That is true.

Q And I take it the updating takes the form of both personal visits, telephone inquires, as well as the gathering of whatever material there is?

A That is correct.

Q How long had you know Mike Papworth?

A At what point in time?

Q Well, I am sorry, as of -- let's peg it at June or July of '68.

A I met Mike Papworth in, roughly, March of 1969.

Q And had you ever heard of him or about him prior to that time?

A I believe I had, through a friend of mine named Roger Lipton.

Q Is it true, Mr.Deane, that in dealing with the new and emerging companies that you, as a rep, functioning in this capacity, would try to gather as much material in connection with the company as possible?

A Absolutely.

Q And would try to gather whatever reports there were that were out or made by other companies?

A Yes, I would.

Q Mike Papworth worked for whom?

A Loomis Sayles.

Q Could you tell us who they were?

A An investment counseling firm in Los Angeles.

Q A well-known one?

A Yes.

Q Respectable one?

A Yes.

Q Sizable one?

A Right.

Q Was their work responsible?

A I would say so, yes, very responsible.

Q And they are well know and well regarded in the field?

A Correct.

Q Did Papworth have any position that you know of in Loomis?

A I don't know what his ultimate function was. He seemed to be quite knowledgeable in terms of analyzing securities. He was a fairly young man, but seemed to know what he was doing and talking about, and came highly recommended to Mr. Lipton.

Q As you testified here earlier, by the time you had met Mr. Deutsch you had already become interested or you had already purchased Richard Packing stock?

A Correct.

Q And in fact I believe you said you had even gotten some projections from Mr. Jim --

A -- Stewart.

Q Did you ever check those projections of Mr. Stewart?

A Absolutely.

Q You, I believe, started I say at one point in your testimony that the report that Mr. Papworth eventually put out on Richard Packing pretty much embodied what you had been told about the projections by Mr. Deutsch, is that correct?

A That is essentially correct, yes.

Q So that that report embodied what had actually been said to you at the time that Mr. Deutsch had this conversation with you, and that would have been when, in September of '68?

A Right -- well, the report was finally written in April or May of '69 and it embodied some information that took place certainly after the August and September period of '68. So there was more to the story by that time than was known in, roughly, August of '68.

Q At any rate, when it did come out it confirmed what Mr. Deutsch had said to you?

A Yes.

MR. SEGAL: May I have this marked for identification, please.

(Defendant Deutsch's Exhibit A was marked for identification.)

MR. SEGAL: Your Honor, I have a clean copy. I handed a copy I had marked up and I didn't realize I had a clean one. May we remark that, please?

THE COURT: Of course.

Q I show you Defendant Deutsch Exhibit A for identification and ask you to just look at that, and I ask you if, just looking at it, that that indicates to you that that is the report Mike Papworth put out.

Q Would you have received it at or about the time of the date of the report which I believe is in March of 1969?

A I would say shortly thereafter, probably.

MR. SEGAL: Your Honor, I would at this time offer Deutsch Exhibit A for identification.

THE COURT: That's this Papworth report; is that right?

MR. SEGAL: Yes, your Honor.

THE COURT: What's the date of it?

MR. SEGAL: March 18, 1969.

THE COURT: Would you show it to counsel?

MR. SEGAL: Your Honor, there are some extra pages in here. The report that I'm holding is solely the -- no, it's not either. It's just organized better. May we revise that so that it conforms with what we have got here?

THE COURT: The Government is in the process of doing that now. Mr. Feffer seems to have something and he's making a comparison. If he has no objection, we can use it.

MR. FEFFER: I have no objection to what is marked as Defendant Deutsch's Exhibit A.

THE COURT: Show it to Mr. Robson and Mr. Block.

dhrf 2 Deane - cross

MR. ROBSON: No objection.

MR. BLOCK: No objection.

THE COURT: Received.

(Defendant Deutsch Exhibit A received in evidence.)

MR. SEGAL: Your Honor, may I read just brief passages from it.

THE COURT: You may read anything you wish from it.

(Mr. Segal read to the jury from Defendant Deutsch's Exhibit A in evidence.)

THE COURT: Just so the jury is clear, "6-30-68," is actually a date, June 30, 1968, and I would assume that would be for the fiscal year which ended that date.

Is that correct, Mr. Segal?

MR. SEGAL: Yes, your Honor.

THE COURT: All right. This report shows that for the fiscal year ended June 30, 1968, Richard Packing Corp. stock had earnings per share of, that is, Richard Packing Company had earnings per share of 17 cents a share for that year.

Continue, please.

(Reading continued.)

Q The "E", I take it, stands for estimate?

A I believe so, but in the body of that report --

MR. FEFFER: Objection, your Honor.

THE COURT: Sustained.

Q Did you become acquainted with the individuals who were connected with these funds?

A Yes.

Q Were these men well regarded in the financial community?

MR. FEFFER: Objection, which men?

THE COURT: The men running the funds, all of them.

Are they well regarded in the financial community?

MR. FEFFER: The reason I'm raising it, it depends upon the time. There were many different people who were involved here.

THE COURT: This answer is only as good as the question which was asked.

THE WITNESS: The answer is yes.

THE COURT: Now you want to ask a question, Mr. Segal?

MR. SEGAL: Certainly.

THE COURT: I think we ought to get to something with probative value.

MR. SEGAL: Very well, your Honor.

Q Now, with regard to your business with Financial

MR. ROBSON: I assumed that was a question directed to me, your Honor.

THE COURT: No, you are not being interrogated at the moment, Mr. Robson.

Q Can you tell us again what that conversation was that you had with Mr. Deutsch the first time, whether that was August or September ---

A At Combustion Equipment Associates?

Q Yes.

A Initially, we were up there to see --

Q Just tell me what the conversation was. I want to know what you said to Mr. Deutsch and what he said to you.

A I said to him that I was interested in Richard Packing, I had a position in the company and I wanted to know more about the situation.

Mr. Deutsch then mentioned that he was starting --- that he and Jaffee were involved in it and that he was starting to, you know, build the company like another McDonald's and he would like to talk to me later about it and to call him at the office for specifics.

Q And you did call him about a week later?

A Sometime after that, yes.

Q Tell us what that conversation was.

MR. PEFFER: I object. Are we going to go through each and every conversation again?

MR. ROBSON: If I want to, your Honor, I have an absolute right to.

THE COURT: Oh, yes, you do.

MR. ROBSON: I have no intention of going through each and every conversation.

THE COURT: I trust that you will be discreet in the degree to which you go. Your rights are there; I just suggest they be exercised, as I know they will be, with some discretion.

You may answer the question.

A I called Mr. Deutsch. I asked him what the earnings projections on the company were going to be, asked him for specifics and details about what was happening with the situation.

Q Is that all you said, "Good morning, Mr. Deutsch, what are the earnings and projections of Richard Packing?"

A No. After he mentioned what they were, I asked him other questions and he mentioned to me that he was trying to build another McDonald's, that he was developing -- he was trying to build the meat business and was starting to set up a franchising operation.

Q And he said to you at that time that the earnings

projections -- were these his words, "The earnings projections are 250" --

A Earnings should be roughly a dollar a share June 30th of 1969, 250 June 30th of '70, $5 June 30th of '71.

Q Have you now told us the entire conversation?

A Well, it is difficult going back that far to relate all of the details. I have told you the essence of what was involved.

Q That is all of the conversation you can recall?

A I was very interested. "What is going to happen? What are you going to do with the franchising operation, with the meat business? How are you going to build it?"

Q Mr. Deutsch told you, did he not, that they were setting up a company for the purpose of selling franchises?

A At some point in time, yes. I don't know whether it was then or later.

Q At that point they had not even started to sell franchises, had they?

A That's right.

Q Did you not understand from that conversation that all Mr. Deutsch was telling you was that if they sold franchises and got everything

[illegible] That in two years [illegible]

t:5 pm

Q You understood that at thattime they were telling you that they knew they were going to make that much money?

A That was my understanding.

Q That was your understanding.

A Correct.

Q As an analyst, did you ask them any questions about the basis on which they came to that conclusion?

A Yes, over a period of time I asked a number of questions about what the very --

Q Not over a period of time. At the time they gave you that estimate.

A I asked -- yes.

Q And the basis was what?

A The basis was the franchise fee, the basis was the royalty per unit, the basis was the building of the meat business and related income therefrom.

Q In other words, that esimate was based upon the assumption that they would sell a certain number of franchises; is that correct?

A That is correct.

Q That they would be able to build those franchises; is that correct?

A Thatis correct.

Q That those franchises would be financially success-

ful operations; is that correct?

A That is correct.

Q That they would be able to acquire certain companies; is that correct?

A That is correct.

Q That the companies they acquired would be profitable; is that correct?

A That is correct.

Q Those were all the assumptions that went into that estimate; is that correct?

A Basically.

Q And at thatpoint they had not built a single franchise unit, had they?

A I don't believe so, no.

Q At that point do you know whether they had even bought a piece of land on which to build a single unit?

A I am not sure if they had.

Q At that point did you know whether they had any idea whether any of these units could be profitable?

A They were talking about specifically in the brochure of substantial profitability for the units.

Q But those were hopes, were they not?

A They ended up beinghopes, yes.

Q Weren't they hopes at that time?

A There was mention of one and I don't remember the name of it exactly but it was F.W. Meats or something. Was that one?

Q I wasn't there, Mr. Deane, you were. It could have been. I remember two companies that were under consideration.

Q Had they entered into an agreement with any of these companies?

A They may have. That, I --

Q Were you told that they entered into any agreement?

A I was told that they were about to merge.

Q Were you told whether they had entered into an agreement?

A At what point in time?

Q At the time you spoke to them in whenever it was at the office of Status Marketing.

A I was told that they were either very close to or about to reach an agreement.

Q Did you ever see the prospectus, the offering circular, which became effective on March 11, 1969?

A Which circular was that?

Q The offering circular of Richards Packing Company.

A Did I see it?

Q And on each one of those occasions, you were asked were you not, about a conversation that you nad with Mr. Deutch on the first occasion you met him at Combustion Equipment; is that correct?

A That is correct.

Q On each one of those occasions you were asked about conversations that you had with Mr. Deutsch thereafter; is that correct?

A That is correct.

Q On each one of those occasions you were asked about conversations you had with Mr. Cohen; is that correct?

A That is correct.

Q Is it also correct that never in any of those statements or in your testimony before the grand jury did you testify that Mr. Detusch or Mr. Cohen gave you projections of 2.50 or $5 a share?

MR. FEFFER: Your Honor, what statements are we talking about now?

MR. ROBSON: We are talking about all the statements that were produced by the government.

THE COURT: Did anyone ever ask you, before you testified here in court, whether Mr. Cohen or Mr. Deutsch ever made any projections?

MR. BLOCK: I object.

MR. ROBSON: That is not the question I asked.

THE COURT: I know it is not the question, Mr. Robson.

A No, they didn't.

THE COURT: Thank you.

Q Were you asked --

THE COURT: Now you may ask your question.

MR. ROBSON: My question, your Honor, was, was he asked about those conversations, and his testimony was that he was and I asked --

THE COURT: Let me hear that from the witness, Mr. Robson. Ask him the question.

MR. ROBSON: I asked and he has already answered that.

My question is whether in any of those statements he ever stated to anybody in those conversations projections were given to him by either Mr. Deutsch or Mr. Cohen.

MR. FEFFER: Your Honor, I object to that.

THE COURT: Overruled.

MR. FEFFER: Unless we talk about which conversation. I think it is very unclear to the witness which conversation.

THE COURT: If the witness understands which questions and which conversations Mr. Robson is talking

MR. FEFFER: Ladies and gentlemen, I am reading from 31B and I will read a small portion thereof, which is a press release dated South St. Paul, Minnesota, May 15, 1969.

(Mr. Feffer reads to jury from Government's Exhibit 31B in evidence.)

MR. FEFFER: I would like to read one additional sentence from the Papworth report, which is Defendant Deutsch's Exhibit A, and it appears under the heading called "Fun Buggy Corporation" and the date of that report is, again, ladies and gentlemen, I believe is March 18, 1969.

(Mr. Feffer reads to jury from Defendant Deutsch's Exhibit A, in evidence.)

MR. FEFFER: 31C, a press release, South St. Paul, Minnesota, July 16, 1969.

(Mr. Feffer reads to jury from Government's Exhibit 31C, in evidence.)

MR. BLOCK: Your Honor, could we have a side bar at this point?

THE COURT: Yes.

(At the side bar.)

MR. BLOCK: If your Honor please, I would move that that part of the exhibit which was just read be

stricken from the exhibit and the jury told to disregard it because I submit to your Honor that we are not here to try whether or not there was a false representation as to whether the dune buggy could operate on a road or in sand.

It seems to me that there is no such charge in the indictment and I think this gets into an area that is completely ridiculous.

MR. FEFFER: I might respond by saying the Papworth report was introduced by Mr. Deutsch.

MR. ORENSTEIN: The fact of the matter is, your HOnor, the dune can operate on sand and can operate on beaches and on the road. I don't understand the point.

THE COURT: I'm not sure the governemnt is going to make much of a point about where this thing operates. It strikes me that a light vehichle such as this can really operate anywhere and the fact that Mr. Papworth indicates it was essentially designed for resort driving seems to me would not preclude it from being driven on hard sand.

I observed the vehicle in the pictures and would think it could easily be utilized on rough roads and hard sand beaches.

Referring to your objection --

MR. BLOCK: I think the jury should be told this is not an issue in the case. That is all I am saying, Judge. It shouldn't be an issue in the case.

THE COURT: Let me find out if the government intends at this point to make that argument in summation.

MR. FEFFER: Your Honor, a lot of it would depend on whether Mr. Cohen took the stand or not. As I look at it now, it is another attempt through press releases to interest people in the stock.

THE COURT: I can't get too excited about it being a material misrepresentation.

MR. FEFFER: I am not saying it is material, I am saying it is another effort. Later on, in the Report Products, which is a company that took over the dune buggy operation, they attempted to have a public offering and if you look in that prospectus and read about the dune buggy and you read about the cautious language they use to describe the dune buggy, it is much more similar to the Papworth report and we are saying it may not be material but it is relevant to show the type of statements being made to interest people receiving these press releases, large institutions, in the products and in this company.

THE COURT: Let me cut this short. The matter has already been read to the jury and it was read from a document received in evidence without objection.

I am going to leave the matter in the record and not strike it and not address the jury in any specific fashion relative to this material. I think it would be more pointing it out at this stage than anything else.

I would suggest that as the case develops and prior to your delivering your summation, you might apprise me at that time whether you intend to make reference to this particular facet of the case in your summation. It may well get lost with many other things which come in over the next several weeks and ultimately it really will come back if it is going to be mentioned in the summation.

Needless to say, if it is not mentioned and the jury requested that it be read, he has read from a document in evidence and I can't do much about it at this juncture. I will not strike the exhibit. I think that would be inappropriate.

For the record, I am denying your application in all respects. However, I am directing the government if they intend to make a point in their summation about the use to which the dune buggy is to be put that I be apprised of that before summations and then I will give you

THE COURT: We will take a ten-minute recess, ladies and gentlemen, and at that point we will resume and go for approximately one hour and we will take our luncheon recess at about 12:25. The jury is admonished as always not to discuss the case among themselves within the jury room and to keep an open mind on all phases of the case.

Ten-minute recess and you may leave, sir.

(Jury excused.)

THE COURT: The Court has noted the jury has just left the courtroom and I have been apprised that the next witness to be called by the government will be Mr. Shwidock; is that correct, Mr. Feffer?

MR. FEFFER: That's correct, your Honor.

THE COURT: Then there is outstanding one matter which I will take up at this time with counsel relative to Mr. Shwidock and his examination.

MR. BLOCK: May I say something before you do your Honor?

THE COURT: You may.

MR. BLOCK: Your Honor, I, of course, have no way of knowing how you expect to rule, but I have been thinking about the record with respect to the application I made and I think it may well be incomplete, and I would

like to ask your Honor to direct the government to make an offer of proof with respect to the anticipated item of Mr. Shwidock with respect to whether or not he will give any evidence connecting Mr. Cohen with the alleged arrangement that he talked about in the grand jury involving the co-defendants, Messrs. Deutsch and Duboff.

THE COURT: I thought we had that from the government already, but I will certainly ask the U.S. Attorney if he expects to elicit from Mr. Shwidock that Mr. Cohen participated in the arrangement either by being present when it was made or by, to Mr. Shwidock's knowledge receiving or sharing in the process of the so called arrangement or kickback.

That's what you want to know?

MR. BLOCK: That's correct.

MR. FEFFER: There will be no testimony to that effect, your Honor, with respect to Mr. Cohen.

THE COURT: That was my assumption. Now you want to make an application, Mr. Block?

MR. BLOCK: Yes, your Honor.

My first application is that all of that testimony should be excluded as being a separate conspiracy, particularly in light of the admission just made by the government; that a separate conspiracy having nothing to

do with the main thrust of this indictment, any such arrangement was not in furtherance of the conspiracy, I contend. That's my first point.

If your Honor is disposed to overrule that objection and to admit that evidence, then in light of the government's admission I would ask your Honor to sever the case at this time as to the defendant Cohen upon the ground that the reception of that evidence with which he is not linked in any way, shape or form would prejudice him so gravely in front of this jury that he would be unable to get a fair trial.

Would you want to add anything to that, Mr. Orenstein?

MR. ORENSTEIN: No.

THE COURT: Mr. Feffer, do you want to respond?

whole picture. That is the point. In taking the whole picture, I come out with the conclusion that the financial quid pro quo which is being offered here at this time is one of the things that kept the conspiracy moving along through its duration, possibly a conspiracy wherein the co=conspirators were not being financed in some way, might have dried up and died before it reached its ultimate point and I can see this in the nature of oil in the machinery which kept the conspiracy going.

I may be in error on this, but this is the way I see it. I see the evidence to be relevant, I see it to be material as it relates specifically now to the motive and intent of two of the conspirators. I see it also being a means whereby the conspiracy is kept going and there is a financial reward being distributed, a sharing in the proceeds of what would normally be described as an illegal partnership.

Under the circumstances, I am going to deny both of your motions, that is, your motion to keep out the testimony of the so called kickbacks and the motion for a severence.

I would suggest that the motion for a severence might be renewed by you at a later time in the case and might be considered by me again. I don't regard

THE WITNESS: Yes, sir.

THE COURT: You may proceed, Mr. Peffer.

MR. PEFFER: Thank you, your Honor.

DIRECT EXAMINATION

BY MR. PEFFER:

Q Mr. Shwidock, I am going to direct your attention to the year 1960, '61; can you tell the court and jury how you were employed at that time?

A Yes, sir. I was employed by a brokerage frim, stock brokerage firm, Ehrlich, Irwin & Company, at 50 Broadway. I was a principal and a trader.

Q Do you know the defendant Bernard Deutsch?

A Yes, I do.

Q Can you please point him out?

A He is right over there (indicating.)

MR. SEGAL: It is conceded --

THE COURT: It is conceded Mr. Shwidock knows Mr. Deutsch.

Q Do you know Mr. Duboff?

MR. ROBSON: Same concession.

THE COURT: It is conceded Mr. Shwidock knows Mr. Duboff.

Q Do you know where these gentlemen were working at that time?

A Yes, sir, at Seymour, Bernard & Duboff, a brokerage house at 50 Broadway.

Q The same building you were working in?

A That's correct.

(Continued.)

Q Is that approximately when you met these two individuals?

A That is correct.

Q When did you leave

A In 1961, I believe -- '61 or '62 -- '71.

Q What did you do after that?

A I went to work for a mortgage brokerage firm in Newark, New Jersey, J. I. Kislak.

Q Approximately how long did you, Mr. Shwidock, remain with Kislak Mortgage?

A Almost two years.

Q That would take us to approximately 1964?

A That is correct.

Q At that time what did you do?

A I left Kislak and formed a mortgage brokerage and real estate company of my own called Seaboard Capital Company.

Q Was anyone else affiliated with you in that company?

A Yes, sir, a Mr. Allen Frank.

Q How long did you remain with Seaboard?

A Until 1967.

Q At that time what did you do?

A We dissolved Seaboard Capital Corporation and I went to work for a communications company in New York covering

8 rmmch ***** Shwidock-direct

Bradley?

A Yes, I did.

Q Did Dan Driesman become the secretary-treasurer?

A Yes, he was.

Q Did Stuart Schiffman become the general counsel?

A That is correct.

Q I believe you testified that both Driesman and Schiffman were attorneys, is that correct?

A That's correct.

Q Mr. Shwidock, when did Kelly, Andrews & Bradley open for business?

A Officially, on Friday, September 13, 1968.

Q During the early part of September and the latter part of August 1968, what, if anything, did you do in connection with that opening?

A I made the rounds of the brokerage houses in Wall Street, advising them that we were opening up a new firm, that I was affiliated with the firm, and acquainting them with the fact that we were looking for business.

Q In the course of doing this, did you go to Jaffee & Company?

A Yes, I did.

Q What is Jaffee & Company?

A They are members of the New York Stock Exchange,

9 rmmch Shwidock-direct

an investment banking house, at 50 Broadway.

Q Whom did you see at Jaffee & Company?

A Stanley Duboff and Bernie Deutsch.

Q For approximately how long did you remain at Jaffee & Company?

A Oh, not too long, about twenty, thirty minutes.

Q Can you tell the Court and jury what you said to Messrs. Deutsch and Duboff, and what they said to you?

MR. BLOCK: If your Honor please, this is subject to connection?

THE COURT: Yes. You will note, ladies and gentlemen, that Mr. Cohen is not alleged to have been present at this discussion that is about to be related. Therefore, the testimony is to be considered by you subject to connection insofar as it relates to Mr. Cohen.

MR. BLOCK: And I have a continuing objection?

THE COURT: Yes, you do.

MR. ROBSON: Your Honor, can we have the date of this conversation fixed?

THE COURT: Yes, because I have it prior to opening, and I don't have a date.

You say you saw Mr. Deutsch and Mr. Duboff at Jaffee & Company when you went there to visit prior to opening the doors at Kelly, Andrews & Bradley?

THE WITNESS: That is correct.

THE COURT: What was the date or approximate date that you had this meeting and conversation with Mr. Deutsch and Mr. Duboff?

THE WITNESS: I would say about a week to ten days prior to our opening.

THE COURT: You say you opened September 13, 1968?

THE WITNESS: That is correct.

THE COURT: So that would be about somewhere between the 3rd and 6th of September, 1968?

THE WITNESS: I would think so.

Q Can you relate the conversation that took place at that time?

A Yes --

MR. SEGAL: May we find out who, if anyone else, was present at this meeting?

THE COURT: All right.

You went to Jaffee & Company and you are about to relate a conversation with certain people. Would you indicate before you tell us what was said and who said it who was present?

THE WITNESS: Just the three of us, Mr. Deutsch, Mr. Duboff and myself.

THE COURT: Very well.

Q Can you relate the conversation thattook place at Jaffee & Company at that time?

A Well, yes. I told them I was opening up this new firm, we should be ready and cleared for trading within a week or so, and that I would like to start doing business with Jaffee & Company and with Mr. Deutsch and Mr. Duboff; that I would be qualified to trade into the pink sheets and I would like situations, stock that I could go in and trade.

At that time they told me that we were new and they didn't know what type of operation we would have and how substantial we were, didn't know Dan Driesman or anything about the company, and would much rather hold off and wait until they committed themselves to any type of business.

I asked if they had stocks I could go in and trade and they at that time recommended that I take a look at a stock called Richard Packing, that I might go into the sheets and trade it, that it was an interesting situation.

Q As a result of this conversation, what, if anything, did you do?

A Prior to our opening, I filed my listings with the National Quotation Bureau and on opening day I was in Richard Packing Corporation, trading the stock.

MR. SEGAL: Your Honor, are we able to get dates on the machine system buy and sell blotters?

THE COURT: Let's try.

Mr. Shwidock, I asked you before when the hand-written blotter began and you indicated what that date was. Could you tell us the date when you started the machine system?

THE WITNESS: Yes, sir.

THE COURT: Taking first 20-B, the buy blotter, what is the first date; and then 20-C, the sell blotter.

THE WITNESS: On the buys, it would be August 25, 1969.

THE COURT: Now going to 20-C, the sell blotter.

THE WITNESS: August 25, 1969.

THE COURT: Thank you.

Q Mr. Shwidock, I am going to direct your attention to approximately one week after you opened business. This would be sometime in mid-September, 1968.

Did you have an occasion to speak to Mr.Deutsch and Mr. Duboff at that time?

A Yes, sir, I did.

Q Where did this conversation take place?

A Well, I had spoken to Mr. Duboff and he asked me to come over to Jaffee & Company, and talk about additional

business.

Q When you got there, can you relate the conversation between yourself and Mr. Deutsch and Mr. Duboff?

THE COURT: Mr. Cohen was not there; is that right?

THE WITNESS: That is correct, he was not.

THE COURT: This conversation, then, will be admitted subject to connection insofar as it relates to Mr. Cohen.

A Yes. Mr. Duboff told me that he and Mr. Deutsch did a tremendous amount of trading, a lot of business, and that --

MR. SEGAL: Your Honor, can we determine who was here?

THE COURT: Of course.

Q Was anybody else there in addition to Mr. Deutsch, Mr. Duboff and yourself?

A No, there were not.

Q Go ahead.

Can you start the conversation over again?

A Yes. Mr. Duboff told me that they did a tremendous amount of business and very heavy volume, and would Kelly, Andrews & Bradley be interested in handling some of this volume through our books. And I said, "Of course."

At that time he said to me,"Well, we don't give away all this business for nothing."

And I said, "Well, you know, exactly what are you looking for?"

And at that time he told me that he was interested in a fifty-fifty deal. All trading done by Kelly, Andrews & Bradley in his particular stocks, we would have to rebate fifty percent of the profits in cash.

I told him at that time that I didn't know whether I could make this kind of a deal or not, but I would have to go back and speak to Dan Driesman, my partner. I told him I would let him know in a day or so.

Q Is Mr. Driesman an accountant?

A Yes, he is.

Q Did you go back to Kelly, Andrews & Bradley?

A Yes, I did.

Q Did you have a conversation with him, Mr. Driesman?

A Yes, I did.

Q Would you tell the Court and jury what you said to Mr. Driesman and what he said to you?

THE COURT: This conversation, which was not in the presence, I gather, of Mr. Cohen or Mr. Deutsch or Mr. Duboff --

Am I correct?

THE WITNESS: That is correct.

THE COURT: -- that will be admitted subject to connection as to all three defendants.

A Yes. I went back to Mr. Driesman and told him of my conversation with Mr. Duboff and Mr. Deutsch and he at that time told me that it would be impossible to handle -- especially if it is no volume -- a fifty percent cash kickback, it would be impossible for us to account for it in our bookkeeping system, and that he could possibly put together a deal whereby we could work out a thirty percent cash kickback arrangement by hiding it through legal fees and general office expenses. But that would be the best that he could come up with, thirty percent.

Q Did you have occasion to see Bernard Deutsch and Stanley Duboff after this meeting?

A Yes, I did.

Q When was this?

A Probably the next day.

Q Where did this meeting take place?

A At the offices of Jaffee & Company.

Q Who was present?

A Mr. Deutsch and Mr. Duboff.

Q Can you relate the conversation that you had at

that time with Mr. Deutsch and Mr. Duboff?

A Yes. I told Mr. Deutsch and Mr. Duboff that Dan Driesman couldn't -- we could not handle a fifty percent cash arrangement deal but we possibly could get by with a thirty percent deal, and if they were interested we were prepared to do business.

Q Was anything further said at this meeting?

A Yes. Mr. Duboff said that he felt that the thirty percent would be all right and that, providing certain parameters were followed -- and he set down a list of, you know, do's and don't's as far as Kelly, Andrews & Bradley were concerned, and myself.

Q What did he say in this regard?

A Number one, that all trading in stocks that were designated by either Mr. Deutsch or Mr. Duboff were to be traded by them exclusively. In other words, they were to tell me how to buy and how to sell, when to buy and when to sell, etc. That at the end of every month, all net profits in these trades, the stocks designated by them, were to be considered part of the deal. The only deal we had was related to stocks that they were involved in.

Thirdly. I was not to front-run any orders.

Q What does the word "front-run" mean?

A Well, if I saw an order from either Mr. Deutsch or Mr. Duboff to buy a block of stock, there's always extra money to be made if you can go in and buy a small piece of stock for yourself and then sell it on the way up. Stock being bought in volume usually goes up and you always grab off a few points in between, and vice versa on the down side.

Of course, the last point was that nobody is supposed to know about the arrangements between us.

Q After this meeting, did you continue to make a market in Richard Packing stock?

A Yes, I did.

Q Did you give prices to the National Quotation Bureau as you indicated before for the pink sheets?

A Yes, sir, every day.

Q How were these prices determined?

A Well, during the day I would speak to either Mr. Duboff or Mr. Deutsch and they would ask me in the course of conversation how I would go into Richard Packing for the following day. I would give them the market I was putting in and either I would be told, "Yes, you are okay," or "Go up" and "Go down."

Q Can you describe for the jury the manner in which you sold shares of Richard Packing stock?

A Yes. I would get a phone call from either Mr. Duboff or Mr. Deutsch advising me that I sold a specified amount of stock of Richard Packing stock, at a price, to a designated broker.

I would then call the broker to confirm the fact, "I just sold you some stock," and clock my ticket.

Q Can you describe for the Court and jury the method in which you purchased Richard Packing stock?

A The same way. I would get a phone call from either Mr. Deutsch or Mr. Duboff, advising me that I was buying a specified amount of stock, at a designated price, from a broker, and I would call the broker and say, "I'm buying so much stock from you at such-and-such a price," and then he would -- then I would write my ticket and clock it.

Q You refer to a ticket. What is a ticket?

A It's a handwritten ticket. It's a -- well, it's a trading ticket. It's just a slip of paper that designates the trade and how much stock is involved, the name of the stock, the broker.

Q Do you know a broker firm by the name of Wood, Walker & Company?

A Yes, I do.

Q At that time in 1968, October of '68, who did you deal with, if anybody, at Wood, Walker & Company?

A Mr. Hugh Deane.

Q Can you describe for the Court and jury the nature of your relationship at that time with Mr. Hugh Deane?

A Well, I had never met Hugh Deane. My relationship with him was strictly on the telephone and I was selling him Richard Packing stock.

Q How were these sales made?

A Just as I indicated before. In most cases I would get a phone call saying you just sold Wood, Walker or Wood, Walker is going to buy "X" amount of stock from you at such and such a price.

Q Do you know a woman by the name of Gerry Nelson Quinn?

A Yes, I know Gerry Nelson.

Q Who is Gerry Nelson?

A She was my secretary.

Q Did you have a conversation with Miss Nelson at that time with respect to Mr. Deutsch and Mr. Duboff?

A Yes, I did.

Q Can you tell the Court and jury what you told Miss Nelson?

MR. SEGAL: Objection, your Honor.

THE COURT: Yes.

MR. FEFFER: In October of 1969, your Honor. I'm only asking for his conversation to her, what he said to her. I'm not asking for her conversation.

THE COURT: All right. If we limit it to that, Mr. Segal, -- your objection obviously is to the total conversation is well taken -- with the limitation presented by the government, do you withdraw your objec - tion?

MR. SEGAL: Yes, your Honor.

THE COURT: Very well.

You're going to relate to us a conversation that you had with this lady, but just tell us what you said to her. Don't tell us what she in turn said to you.

A I had given her instructions that in case of my absence, on any calls from Stanley Duboff or Bernie Deutsch regarding orders she was to execute those orders immediately.

Q I direct your attention now to the first part of October or thereabouts in 1968. Did you have an

occasion to speak with Mr. Duboff and Mr. Deutsch at that time?

A Yes.

MR. SEGAL: I'm sorry, can we have the date?

Q In the early part of October or thereabout, in that range.

A Yes.

Q Where did this conversation take place, can you tell the Court and jury the circumstances leading up to the conversation?

A Yes. I was asked to come over to the office of Jaffee & Company. I went up there and Mr. Duboff told me to go upstairs; that Mr. Deutsch wanted to introduce me to somebody.

I went upstairs to an office and was greeted in a reception area by Mr. Deutsch, who took me into an inner office and introduced me to two gentlemen.

Q Do you recall the names of these two men?

A I can recall the name of one.

Q Who was that?

A Mr. Jack Reiss.

Q How did Mr. Deutsch introduce you to Mr. Reiss?

A Mr. Reiss was a President of chairman of the board or something of the Reiss Bank in Switzerland.

Q How long did this meeting last?

A Only a very short time. Just a minute or two

Q Did you have a conversation with Jack Reiss?

A Yes.

Q What did Mr. Reiss say to you?

A Nothing very much more than, you know, "IT's very nice meeting you and if you ever get to Switzerland, look us up," and things like that.

Q What happened next?

A I left the office. Mr. Deutsch took me to the door and told me to go back downstairs and wait for him with Mr. Duboff.

Q Did you have any further conversation as you were leaving the room with Mr. Deutsch?

A Yes. He told me that the Reiss Bank was one of -- Mr. Jack Reiss was the head of the Reiss Bank and that they were one of their best accounts and they did a lot of business for them and with them.

Q Where did you go following this conversation?

A Back downstairs to Jaffee & Company.

Q Who did you see at Jaffee & Company?

A Stanley Duboff.

Q Did you have a conversation with Mr. Duboff at that time?

A Yes, he asked me if I had met Mr. Reiss and I said yes, I had.

Q What else, if anything, did he say?

A He told me that they were big accounts and they were good accounts and they knew them very, very well. And at that time he had suggested that we should or we could subscribe to an investment advisory service from the Reiss Bank and the investment advisory payments would work against the 30% cash kickback that we were paying out, and would make life much easier for us because we would receive vouchers and we would receive statistical service.

I asked him how much he figured it would run, how much he figured it sould come to, and he said approximately -- based upon the volume -- we could run as high as -- roughly on $10,000 a month.

I then said I felt that was pretty steep for an investment advisory service.

And he said, "Well, a lot of brokerage houses are paying a hell of a lot more for this type of service. Whatever you get, you will be getting bills that you can write off and charge off against statistical service. You will be getting reports from the bank and you can, you know, file them."

Q Did Mr. Deutsch join you at any point during the conversation?

A Yes.

Q What, if anything, did Mr. Deutsch say when he came down?

A Just, you know, he reiterated again the fact that Mr. Jack Reiss was a good friend and he was a good account and that he does a lot of business with him.

Q Was there any discussion at all as to the meeting with Mr. Reiss, as to your meeting with Mr. Reiss?

A Well, I went back to Kelly, Andrews & Bradley and told Dan Driesman about it.

Q And this was when?

A The same afternoon.

Q What did Mr. Driesman say to you and what did you say to Mr. Driesman?

A He was quite pleased because he felt the same way, that we got a legitimate expense item, a bill from an investment banking or investment advisory service, and, therefore, our books would reflect a legitimate expense of -- you know, business expense. It would make life much easier for us to pull the cash out of the business.

Q Shortly after this time did you begin receiving

newsletters, pamphlets and other items pertaining to this investment advisory service?

A Yes, I did.

Q Can you tell the Court and jury what this material basically dealt with?

A Commodities.

Q Commodities in this country or in Europe?

A Europe.

Q Did Kelly, Andrews & Bradley at that time do business or thereafter, in European stocks or commodities?

A No, we didn't.

THE COURT: Mr. Feffer, I'm looking at the time.

MR. FEFFER: It might be a good idea, your Honor.

THE COURT: I'm wondering if you're going to start a new area of inquiry and to go for five minutes or so, I think, probably would interrupt the flow of the testimony. Do you think it would be a good time to take a break?

MR. FEFFER: I do.

THE COURT: I have indicated previously to the jury that this will be a somewhat longer than usual lunch hour but I do know the day outside is rather

mp6 ***** Shwidock-direct

subject to a motion to strike in the event you develop certain things during the course of this trial which lead me to conclude that striking these records would be appropriate. So they are admitted subject to connection and subject to a motion to strike.

You may proceed.

DIRECT EXAMINATION RESUMED

BY MR. PEFFER:

Q Prior to lunch you related to the Court and jury a conversation that took place at Jaffe & Co. at which a portion of Mr. Jack Reiss was present?

THE COURT: I think you ought to try that one again, for form.

Q I believe prior to the luncheon break you testified to a conversation at Jaffe & Co. at which a portion thereof Mr. Jack Reiss was present, is that correct?

A That is correct.

Q Was there any further conversation that took place at that meeting?

A Yes, sir, there was.

Q Can youtell the Court and jury what that was?

A As far as the material coming from the Reiss bank, the statistical material, I was told by Mr. Duboff

mp7 Shwidock-direct

to just keep it in my file in case the authorities came around asking what did I get for my money and I would be able to show them the file. As to my meeting with Mr. Reiss, Mr Deutsch said in case anybody asks me, I could always say I did meet Mr. Jack Reiss.

Q I believe you then testified to receiving certain material from the Reiss Bank?

A That is correct.

Q I am going to show you what has been marked 21-A, and it goes through the alphabet once to 21-Z, and then 21-AA through 21-GG.

I will ask you to look through each item and identify this material, if you can.

(Pause.)

A Yes, sir.

Q Can you tell the Court and jury what those exhibits are?

A This is material sent to me by the Reiss Bank.

MR. PEPPER: Your Honor, the government offers 21-A through Z and 21-AA through 21-GG.

THE COURT: When did you start to receive this material?

THE WITNESS: I guess in November or December of 1968.

THE WITNESS: No.

THE COURT: How about "Ciba, Bearer"?

THE WITNESS: No, sir.

MR. BLOCK: Could we approach the side bar, your Honor, off the record?

THE COURT: Of course.

(Discussion off the record at the side bar.)

BY MR. FEFFER:

Q What did you do with the material you received from the Reiss Bank?

A Pardon me?

Q What did you do with the material you received from the Reiss Bank?

A Put it in a folder.

Q Did you ever utilize it in any way in the course of your business?

A No, sir.

Q How much money did you pay the Reiss Bank, in total, for this service?

A $90,000.

Q I show you what has been marked 24A, 24B, 24C 24D, and 24E and ask you to look at these and identify them, if you can(handing).

(Pause.)

A These are invoices from the Reiss Bank to Kelly, Andrews & Bradley and these are the checks we sent to the Reiss Bank in payment of these invoices.

MR. FEFFER: The government offers 24A through D.

THE COURT: May I inquire again what period is covered?

MR. FEFFER: Yes, sir. Would you like me to read it to you or to the witness --

THE COURT: Just indicate --

MR. FEFFER: 24A is 11/8/68; 24B is 11/26/68; 24C is 1/7/69; 24E is August 7, 1969; 24D is January 5, 1970.

THE COURT: Very well. I think you misspoke yourself before when you said you were offering 24A to D. You're going to offer 24A to E?

MR. FEFFER: I'm sorry. Yes, your Honor.

MR. BLOCK: Same ruling with respect to Mr. Cohen?

THE COURT: Yes, same ruling with respect to all of the defendants. If there is any further objection, I will hear it from counsel.

(Pause.)

MR. SEGAL: Voir dire, your Honor?

mp ***** Shwedock-direct 979

THE COURT: Approximately?

THE WITNESS: Just about the time of that letter.

THE COURT: The letter dated May 29, 1969?

THE WITNESS: Yes, sir.

A I told him that the material I had been getting from the Reiss Bank was pure and simple garbage, I didn't have any use for it at all, and that it was strictly commodities and we did not deal in commodities and if anybody came in to look at our files to see what we paid $10,000 a month for, I think the whole thing would be suspect.

He at that time said that he would -- either he would or have Bernie Deutsch contact the Reiss Bank and tell them to send us material relative to the type of thing that we were doing, industrial U.S. stocks, et cetera.

Q After this conversation, did the nature of the material change that you received from the Reiss Bank?

MR. SEGAL: Objection. Form.

THE COURT: You are leading, yes. Would you rephrase your question?

Q Did you receive material after this telephone conversation from the Reiss Bank?

A Yes.

subject of this indictment.

Now, I do not know --

THE COURT: I do not think the government is limiting itself to that. If you can show me in the bill of particulars what they have, I might rethink the point.

At this juncture, I have heard you at length, I heard your colleagues join in your motion, and I have heard the government's comment. The record speaks for itself as to the nature of the objections made and the timeliness of this application, and putting all that aside-- I am saying that on the basis of the record as I see it now -- the motion for a mistrial is denied.

(In open court.)

THE COURT: You may proceed, Mr. Feffer.

BY MR. FEFFER:

Q Mr. Shwidock, are you familiar with a company called Robert Aaron Young?

A Yes, sir, I am.

Q What is Robert Aaron Young?

A It's an art gallery.

Q Did you have an occasion to speak with Mr. Duboff with respect to this company?

A Yes, sir, I did.

Q Could you tell the Court and jury approximately

when this was?

A In the latter part of 1969.

Q How did this conversation take place?

A Mr. Duboff told me that he had purchased some paintings or art work from the studio and that he was having the bill sent to Kelly, Andrews & Bradley, and that I was to pay the bills, and the money or the cost of the art work was to be charged against the 30 per cent cash that we were to pay him.

Q What happened next, Mr.Shwidock?

A I received, I believe, two bills and I paid them. And shortly thereafter I received a crate of art work.

Q After that time, what happened?

A Mr. Duboff came and picked up the art work.

Q Are you familiar with a company known as Guys With Buys?

A Yes, sir.

THE COURT: Guys With Buys?

MR. FEFFER: Yes, your Honor.

MR. ROBSON: G-u-y-s?

MR. FEFFER: I believe so.

Q What is Guys With Buys, Mr.Shwidock?

A So far as I know, it's a store in Brooklyn.

That's all I know about it.

Q Did you ever have a conversation with Mr. Deutsch with respect to this store in Brooklyn?

A Yes, sir, I did.

Q Do you know approximately when these conversations took place?

A I believe it was in the latter part of '68.

THE COURT: What did Guys With Buys sell, if you know?

THE WITNESS: I don't know.

THE COURT: Just a store in Brooklyn?

THE WITNESS: That is correct.

Q Was this a telephone conversation or a conversation in person with Mr. Deutsch?

A This was a telephone conversation.

Q What did Mr. Deutsch say to you and what did you say to him?

A He told me that he was having Guys With Buys send me a couple of bills, and I was to pay out against those bills and charge it off within our company to office expense and against the 30 per cent cash that we were to give back.

Q What did you do after that telephone call?

A I got the bills and the -- the bills were sent

in and I paid them.

Q Mr. Shwidock, I show you --

MR. RODSON: If your Honor please, I am going to object to this testimony and move to strike it on the ground that it has absolutely no relation to the charges in this indictment.

THE COURT: Overruled.

MR. SEGAL: I join in that, your Honor.

Q I show you 25-A for identification --

THE COURT: Overruled.

Q -- and 25-B, and ask you to look at those and identify them, if you can.

A Yes, these are the checks I sent to Guys With Buys.

1 pm 2 Q This would be after this telephone conversation with Mr. Deutsch?

A Yes.

MR. FEFFER: The government offers 25-A and B.

THE COURT: Show them to counsel.

MR. BLOCK: Your Honor, the usual objection as far as Mr. Cohen is concerned.

THE COURT: Yes, indeed.

MR. ROBSON: If your Honor please, I object on the same ground, that it has absolutely no relationship to this case whatsoever.

THE COURT: Mr. Segal?

MR. SEGAL: May I have a voir dire, your Honor?

THE COURT: You may.

VOIR DIRE EXAMINATION

BY MR. SEGAL:

Q Mr. Shwidock, do you have the checkbook of Kelly, Andrews & Bradley?

A No, sir, I do not.

Q Do you know what the stubs read that are connected to these checks?

A No, sir, I do not.

MR. SEGAL: Your Honor, at this time I call

upon the government to produce the checkbook stubs so that we may, in some better way, have the wherewithal for examining the documents.

THE COURT: You have the cash disbursements book here if you would like to look at it. It is in evidence.

MR. SEGAL: Very well.

Q May I ask you, if you would, could you locate in the cash disbursements book, Mr. Shwidock, two checks of 11/7/68 --

THE COURT: You are looking in 20-D, are you, sir?

THE WITNESS: 20-D, correct.

THE COURT: All right. Would you show that to Mr. Segal, if you can find it.

You do not have the stubs to these, do you?

THE WITNESS: No, sir, I do not.

MR. SEGAL: Your Honor, I would have the general objection which has been already posed to the Court on these.

THE COURT: Mr. Feffer?

MR. FEFFER: Nothing, your Honor.

THE COURT: You were getting up.

Overruled, and these two items, 25-A and B, which are checks, will be received, as with the other recent documentary offers, subject to connection.

(Government's Exhibits 25-A and 25-B were received in evidence.)

THE COURT: Are you finishing up on this subject, or did you intend to start another subject, sir?

MR. FEFFER: I was going to finish up on this subject. It would take another five minutes.

THE COURT: I was going to keep my promise to the jury, if I may. You won't be finished?

MR.FEFFER: No.

THE COURT: I note the hour and I note my promise.

Ladies and gentlemen, we are going to recess at this time and we are going to resume promptly tomorrow morning at 9:30 a.m. I would admonish you, as I have on every occasion when you left the courthouse, please do not discuss the case among yourselves, do not remain within the hearing of anyone else who may be discussing the case.

In the event you should read, hear or see anything which relates to this case on any media, I direct that you report the matter to me at once.

Please keep an open mind on all facets of the case until it has been completed and submitted to you for your consideration.

The jury is excused and directed to return tomorrow morning at 9:30 a.m. Good evening, everybody.

point I would suggest that counsel meet and see if you can come up with something which you would want the Court to say. Absent your coming up with anything, I would try to deal with the matter myself.

Incidentally, in respect to something which was said by Mr. Feffer, I am looking at my own notes and I do have an indication that during Mr. Segal's cross examination of Mrs. Quinn, it was elicited that she took orders from Mr. Deutsch and Mr. Duboff when Mr. Shwidock was not there; and my own notes, and I am looking for the place in the transcript, indicate they phoned in orders for Status Marketing, Acrite, which I have as Industries --

MR. FEFFER: Page 371, your Honor.

THE COURT: Is that it? -- Mobile Home Multiplex, which is what I show in my notes.

MR. FEFFER: That is correct.

THE COURT: So within certain limits, gentlemen -- yes, I see it here now. 371 beginning at line 6. And those other stocks that I have mentioned are set forth in the minutes to a certain extent, the door was opened by the defense.

Now, you may say that the fact that we mentioned these other stocks in cross examination does not permit the government to go as far as they have gone, but obviously when

Q Mr. Shwidock, did you have an occasion over the last month or two and even before that to review certain documents to ease you in this calculation?

A Yes, I did.

Q Was the purchase and sale blotter of Kelly, Andrews & Bradley one of the documents you reviewed?

A Yes, that is correct.

Q Based on that, can you tell the jury the profit Kelly Andrews & Bradley made during the time you were President of that company in the trading of Richard Packing stock?

A Approximately $50,000.

Q How much of that profit was retained by Kelly, Andrews & Bradley?

A 70% was retained by Kelly, Andrews & Bradley.

Q The other 30%?

A In cash rebate or kickback to Mr. Deutsch and Mr. Duboff.

Q Mr. Shwidock, did you pay income taxes --

MR. SEGAL: Your Honor, I would ask that that last remark be stricken unless it can be shown that this review of the books substantiated the statement that was made by the witness.

THE COURT: Of course you can examine on cross

A Same method, checks by Kelly, Andrews & Bradley to Delisi.

Q Are you familiar with A.S. Ford?

A Yes, sir.

MR. SEGAL: I object to this. I think we are now in a complete inculpatory area in which this witness is now being actually cross examined, not examined, by the government.

THE COURT: Unfortunately I think the door was opened in one of the voir dire examinations. I gather was is coming is that these personal expenses, and this must be what they are, are charged in those books that were the subject of voir dire examination, as business expenses.

If that is the case, I will permit it. If it is not, I will terminate the examination.

MR. FEFFER: It is, your Honor. I would like to cite authority for what I am doing --

THE COURT: There is more authority, I know. I wanted to pinpoint it to one positive thing that developed during the trial. Since the subject has been gone into, albeit in voir dire, and has been made an issue of sorts, I will permit it.

Q Are you familiar with a company called A.S.

Ford?

A Yes, sir.

Q What type of company is that?

A Ford dealer in New Jersey.

Q What was your connection with that company?

A Bought a car from A.S. Ford.

Q Did you charge that car off against Kelly, Andrews & Bradly?

A Yes, sir, I did.

Q During the time you were at Kelly, Andrews & Bradley you were the President of that company?

A That's correct.

Q Have you reached any arrangement or any type of agreement with the United States Attorney's office or the Internal Revenue Service with respect to your failure to pay taxes on this income?

A Yes, sir, I have.

Q Will you tell the Court and jury what that arrangement is?

A Yes, sir. I would be civilly liable for all income taxes unpaid and plus the possibility of a 50% penalty, and the U.S. Attorney's office has assured me that on the criminal aspect that no action would be taken.

Q You made reference, I believe, to sharing

THE COURT: I think that is a reasonable request. If the witness can be more specific as to the month and day, or at least the month, of this conversation, I should like him to do so.

THE WITNESS: January of 1969.

THE COURT: Can you tell us when or approximately when in that month?

THE WITNESS: No, sir, I couldn't.

Q Where did this conversation take place?

A On the phone.

Q Who initiated the phone call?

A I don't recall who initiated the phone call, but I know we were talking.

Q What did you say to Mr. Deutsch and what did Mr. Deutsch say to you at that time?

MR. BLOCK: If your Honor please, this again is subject to connection, as far as my client is concerned?

THE COURT: In fact, it is subject to connection so far as both Mr. Cohen and Mr. Duboff are concerned.

A He told me that Richard Packing Company was planning an offering, a Reg A offering, and that Kelly, Andrews & Bradley would be the underwriters.

Q Several weeks later, sometime in the month of February --

MR. ROBSON: If your Honor please, I think that the proper way to question this witness is to ask him what, if anything, transpired thereafter with respect to that conversation, not to lead him step by step.

THE COURT: You really shouldn't suggest a date, for example, and I think the objection is well taken.

The witness doesn't seem to require to have his recollection refreshed. Needless to say, if you get to a point where he requires that, I will permit that.

Q What was the next thing that happened with respect to this proposed Reg A offering, as you put it?

A I spoke with Mr. Deutsch again, I would say about a week or two later, asking him when he thought that the offering would be ready. I was anxious for it, our firm needed money, we were in desperate shape at that time --

MR. ROBSON: If your Honor please --

THE COURT: Let's stick to the conversation. You spoke to Mr. Deutsch?

THE WITNESS: That is correct.

THE COURT: Did you speak to him on the phone or in person?

THE WITNESS: On the phone again.

THE COURT: Would you tell us what you said to him and what he said to you during the course of that

telephone conversation a week or so after the initial conversation?

THE WITNESS: I asked him when the offering would be ready and he told me that they decided it was not going to be underwritten by Kelly, Andrews & Bradley, but would be an offering by the company, and that Kelly, Andrews & Bradley would send out all confirmations for the company.

Q Was there any other conversation at that time?

A Yes. I asked Mr. Deutsch how Kelly, Andrews & Bradley was going to make their money, where was our money coming in on this deal, and --

Q What did he say to you in that regard?

A He said, "You don't have to worry about it. We will work it out, but you have not lost any money with us as yet, have you?"

Q Do you know a Milton Cohen?

A Yes.

Q Do you see him in the courtroom?

A Yes, sir.

Q Can you identify him?

A Yes --

MR. ORENSTEIN: We concede the identification, your Honor.

THE COURT: Mr. Shwidock is conceded to know Mr. Cohen.

Q When did you meet Mr. Cohen?

MR. BLOCK: If he did. It hasn't been established.

MR. FEFFER: He said he knew him.

THE COURT: Let me go back one step.

Did there come a time when you met Mr. Cohen?

THE WITNESS: Yes, sir.

THE COURT: When was that?

THE WITNESS: In February of 1969.

Q Where did you meet Mr. Cohen?

A At a mortgage bankers convention, I believe at the Hilton Hotel, in the suite -- the hospitality suite of one of the mortgage brokerage companies.

Q Who was present?

A Mr. Deutsch, Mr. Duboff, Mr. Cohen, myself were at this particular party, or whatever it was.

Q Did the four of you have any conversation or discussion at that time?

A Yes, sir, we did.

Q Will you tell the Court and jury what each of you said at that time?

A Well, I was introduced to Mr. Cohen for the first time --

MR. SEGAL: I object to this conversation, your Honor, unless it is represented by the Government that it relates to the stock of Richard Packing.

THE COURT: Well, let's find that out.

Does it? Was the Richard Packing Company discussed in this conversation?

MR. FEFFER: Your Honor, Mr. Robson asked me just to relate the testimony --

THE COURT: No, counsel has asked --

MR. FEFFER: Yes, your Honor.

THE COURT: All right, proceed. Mr. Segal, you accept that representation?

MR. SEGAL: I of course have to, your Honor.

THE COURT: Tell us what each of you gentlemen said during the course of that conversation.

THE WITNESS: Well, I was introduced to Mr. Cohen as the broker who was going to handle the Richard Packing money and that I was the guy who would send him the $280,000 that was to be the proceeds of the sale of Richard Packing stock, and Mr. Deutsch said to Mr.Cohen, "I want you to know Mr. Shwidock. He is the president" or "he is with Kelly, Andrews & Bradley, and he is the guy you will get the money from."

Then he said to me, "It is your understanding you

are sending $280,000 against the sale of stock?"

I said, "Yes."

He said to Mr. Cohen, "It is your understanding you will receive $280,000 against the sale of stock."

He said, "That's correct," and after that we talked for a few minutes and then went downstairs for dinner.

Q This is all in conneciton with this Reg A, as you stated before?

A That is correct.

Q Did you have an occasion to talk to Mr. Deutsch after this meeting?

A Yes, I did.

Q Approximately when was this?

A I spoke with him about a week later, a week after the convention, I guess.

Q Where did this conversation take place?

A It was on the telephone. I had called Mr. Deutsch and advised him that here I was sending out confirmations on an offering and I didn't have any instructions, formal instructions, in writing, from anybody regarding who to send the money to. I knew I was supposed to send the money to Richard Packing, but I didn't have it in writing. So I asked Mr. Deutsch if I could get a letter or something,

from the company.

Mr. Deutsch advised me then that he would have Mr. Cohen call me within the next few minutes.

Q Was there any other conversation with Mr. Deutsch at that time?

A At that moment, no.

Q Did you have an occasion to speak with Mr. Cohen?

A Yes, about ten minutes later, Milton Cohen called and chatted for a few minutes, and I told him I needed a letter from him stating that the proceeds of the sale of stock were to go to Richard Packing.

Q What did he say to you?

A He said, "Fine, you'll have it," and about two days later I got the letter.

Q I am going to show you what has been received in evidence as Defendant Cohen's Exhibit F and ask you to look at it, and identify it if you can.

A Yes, this is the letter I received form Mr. Cohen.

MR. FEFFER: Your Honor, may I read this letter to the jury?

THE COURT: It is in evidence. You may.

MR. FEFFER: I have the original, if counsel would like to substitute the original for the copy.

MR. BLOCK: Of course. I have no objection.

MR. FEFFER: Ladies and gentlemen, Defendant Cohen's Exhibit F reads as follows:

(Mr. Feffer read to the jury from Defendant Cohen's Exhibit F in evidence.)

/74 3a

Q Mr. Shwidock, did there come an occasion when you received offering circulars in connection with the Peg A?

A Yes, there was.

Q Approximately when was that?

A I would say about a week or ten days after I spoke with Mr. Cohen.

Q Did you have an occasion to speak with Mr. Duboff at that time on the telephone?

A Yes. I called Mr. Duboff, told him that I received the offering circulars and asked him if I could have the names so I can start sending out confirmations.

Q What, if anything, did he say to you?

A He said, "Well, get them together. In the meantime, you have a short position in your trading account. Take a thousand shares into trading at $28 a share."

Q I'm going to show you what has been marked as Government's Exhibit 14-A and it's been received in evidence.

Will you look at it, please, and identify it if you can?

A Yes. This is our order ticket and copy of our confirmation on 1,000 shares of Richard Packing. New issue.

Q Did this relate to the thousand shares that you spoke to Mr. Duboff about on the phone?

A That is correct.

Q Did you have an occasion to speak with Mr. Duboff again by telephone shortly after this meeting?

A Yes.

Q Do you recall the approximate date of that telephone conversation?

A Yes. It was within the week. A few days after the initial conversation.

Q What did Mr. Duboff say to you and what did you say to Mr. Duboff on that occasion?

A Well, I told him that I would like to get the rest of the names in so I can finish off the billinf of the Richard Packing, the new issue of the Richard Packing.

MR. ROBSON: If yourHonor please, I got involved with something else, and I would just like to get the date of that conversation.

THE COURT: Yes, indeed. It was given in general point of time, but let's see if we can be more specific.

Now, this most recent conversation that you had with Mr. Duboff, can you give us the date or approximate date?

THE WITNESS: On or about March 18th.

THE COURT: 1969?

THE WITNESS: That is correct.

THE COURT: Very well.

Q Mr. Shwidock, will you please again state for the Court and jury the conversation you had with Mr. Duboff at that time?

A Well, I told him -- I asked Mr. Duboff when I'm going to get more names to bill on the Richard Packing new issue, and --

Q What did he say to you?

A Well,he said at that time, he said, "All right, I'll tell you what. You bill Jaffee & Company for 5,000 shares at" -- I believe it was "$28-1/2, and take 1,000 shares into your trading position and sell 500 of that 1,000 shares to A. J. Butler & Company." The other 500 shares was to stay in our trading account.

MR. BLOCK: If your Honor please, are these conversations with Mr. Duboff about this all taken subject to connection?

THE COURT: Indeed. And they are also subject to connection -- well, let's go back. They are subject to connection relative to Mr. Cohen and also Mr. Deutsch.

MR. SEGAL: Your Honor, I just take that as a continuing objection.

THE COURT: Yes, I tried to mention each time where it is appropriate, persons to whom it would be pertinent.

Q I show you what has been received in evidence as Government's Exhibit 16.

Will you look at it, Mr. Shwidock, and identify it if you can for the Court and jury?

A Yes, sir. It's our trading ticket selling 5,000 shares of Richard Packing new issue at $28-1/2 to Loeb Rhoades account of Jaffee on account of the -- $28-1/2 less commission.

Q When you say "Loeb Rhoades for the account of Jaffee," can you explain that to the Court and jury?

A Yes. Loeb Rhoades was the clearing agent for Jaffee & Company.

Q What does a clearing agent do?

A They handle the stock received, stock delivered and billing for the member.

Q I believe you testified that you took a thousand shares into your trading account, is that correct?

A That is correct.

Q I show you what has been marked and received as Government's Exhibit 15-A and ask you to look at that and identify it, if you can, for the Court and jury.

A This is 500 shares of Richard Packing dated March 18th, purchased at $28 a share.

Q I show you what has been marked as 14-B for

identification.

A This is another 500 shares dated March 18th, purchased from Richard Packing, $28 a share.

Q I believe you testified that with respect to 500 of the 1,000 that went into your trading account you sold 500 to A. J. Butler; is that correct?

A That is correct.

Q I show you Government's Exhibit 15-B in evidence and ask you to look at it and identify it if you can.

A Yes, this is the work ticket on 500 shares of Richard Packing sold to A. J. Butler at $31 a share on March 18th.

Q And you purchased those shares for how much, or received those for how much?

A $28 a share.

THE COURT: What did you sell for?

THE WITNESS: $31.

Q Mr. Shwidock, you made a reference to a trading account of Kelly, Andrews & Bradley; is that correct?

A That is correct.

Q Can you tell the Court and jury what a trading account is?

A Yes. It's the purchase and sale by a broker for his own account. He uses his own money to buy and sell

THE COURT: Let's try to clear that up for the jury. Does everybody know what a net base is? I think it is appropriate since some of the jurors know, but all of us don't, what you mean when you say "net base".

THE WITNESS: No commission.

MR. BLOCK: No what?

THE WITNESS: No commission.

THE COURT: So that when you are trading your own account, you don't add in or subtract out commissions?

THE WITNESS: That's correct.

THE COURT: When you're trading for the account of a customer, you do charge commission?

THE WITNESS: That's correct.

Q Did you have a further conversation with Mr. Duboff with respect to this Regulation A?

A Yes,sir, I did.

Q Can you tell the Court and jury approximately when the conversation occurred?

A I believe it was the beginning of April.

Q At that time can you tell the Court and jury --

MR. ROBSON: If your Honor please, can that conversation be placed any better than the beginning of April?

THE COURT: Let's see what we can do with it, Mr. Robson.

We are now in 1969; is that right?

THE WITNESS: That's correct.

THE COURT: And you said you had a conversation at the beginning of April. Is there a way that you can determine -- either tie down now or some document you can look at which could refresh your recollection if you can't tie it down to give us the exact date of your conversation with Mr. Duboff early in April?

THE WITNESS: Yes, sir, there is.

THE COURT: Very well. Do you recall the date or would you need something?

THE WITNESS: It was on or about April 4th.

THE COURT: All right. We will stay with that for the moment.

Q Who initiated this telephone conversation?

A I did.

Q Could you tell the Court and jury what you said to Mr. Duboff and what he said to you?

A Yes. There were still 3,000 shares of the new issue, the Reg A, unsold, and I told him that I would like to clean that off my books, finish off the new issue and get the money out to Richard Packing.

He then told me to put it in two accounts.

Q Put it in what?

A In the two accounts. And I sold 1,500 shares to one Harry Morganstin and 1,500 shares to a William Harris.

Q Do you recall the price that Mr. Morganstin was charged for the 1,500 shares?

A 28¼.

Q And the 1/4 represents what?

A Commission.

Q Did there come a time when those 1500 shares were sold out of that account?

A Yes, sir.

Q For how much were they sold?

A 32 7/8, I believe.

Q That would be for 1,500 shares; is that correct?

A That's correct

Q I show you 17A in evidence, that's Government's 17A, and I ask you to look at that and to identify that for the Court and jury, if you can.

A Yes, this is the work ticket, our selling 1,500 shares of Richard Packing at 28¼ to Harry Morganstin.

Q I ask you to look at 17B in evidence and to identify that for the Court and jury, if you can.

A Yes, this is the sale of 1,500 Richard Packing at 32 7/8 of the account of Harry Morganstin.

Q I believeyou testified that you put 1,500 other shares from the issue into an account of William Harris; is that correct?

A That's correct.

Q Were those shares dold out from that account?

A That's correct.

Q Do you recall the price at which they were sold out from that account?

A 32 7/8.

Q That would be $32 and 7/8 per share?

A PEr share.

Q Again, the price that Mr. Harris paid for receiving these shares?

A 28¼.

Q And the 1/4 represents what?

A Commission.

Q I show you 18A in evidence and ask you to look at it and to identify it, if you can.

A This is our sale of 1,500 Richard Packing at 28¼ to William Harris on the new issue.

Q I show you 18B in evidence and ask you to look at it and to identify it.

A Yes, this is the sale by William Harris of 1,500 shares of Richard Packing at 32 7/8.

Q You testified, I believe, thatyou were supposed to send $200,000 to Richard Packing Company; is that correct?

A That's correct.

Q I show you 19A for identification and 19B for identification and 19C for identification and 19D for identification and ask you to look at each and to identify them, if you can.

A Yes, these are the checks that went to Richard Packing in payment for the new issue.

Q Are each of these checks signed by you?

A Yes, sir, they are.

MR. FEFFER: Your Honor, the government offers 19A, 19B, 19C and 19D.

THE COURT: Show them to counsel.

MR. BLOCK: No objection.

MR. SEGAL: I have no objection, your Honor.

THE COURT: Mr. Robson?

MR. ROBSON: No objection, your Honor.

MR. ORENSTEIN: No objection.

THE COURT: Very good, Mr. Orenstein. Received, no objection.

Those at one point in my notes had been marked

(In open court.)

THE COURT: We will proceed.

BY MR. FEFFER:

Q Mr. Shwidock, I believe your conversation with Mr. Duboff took place concerning 3,000 shares of each of two accounts --

A That's correct.

Q One account was Harry Morganstin and the other was William Harris?

A That's correct.

Q Who is Harry Morganstin?

A A relative of Mr. Deutsch.

Q Did you ever meet Mr. Morganstin?

A No, sir, I never have.

Q Have you ever spoken to Mr. Morganstin on the telephone, as far as you know?

A No, sir, I never have.

Q Who is William Harris?

A A relative of Stanley Duboff.

Q Have you had the occasion to meet with Mr. Harris?

A Once I drove Mr. Duboff home and he was outside the house and introduced me to him, and that was it.

Q Do you recall when the Morganstin and Harris

accounts were first opened at Kelly, Andrews & Bradley?

A Yes. They started trading in January -- first week in January of 1969.

Q Will you tell the Court and the jury the circumstances leading up to the opening of these accounts?

MR. SEGAL: Your Honor, may we have this, rather than the circumstances, broken down with what conversation was had with whom and where and when?

THE COURT: Yes. Why don't we start out by finding out just when these accounts were opened.

THE WITNESS: They started trading, I believe, January 2, of 1969. So the accounts would have had to have been opened prior to that date.

THE COURT: Would you tell us the first thing that happened in connection with the opening of either one or both of those accounts?

THE WITNESS: Yes. I was asked to send out new account forms.

THE COURT: Who asked you?

THE WITNESS: Mr. Duboff, giving me names and addresses, for both accounts.

Q Was this a telephone conversation?

A Yes.

Q Approximately when did it occur?

A Well, I would assume it took place a week or so prior to January 2nd.

THE COURT: Now what you assume. Le'ts see if you can be more exact as to your recollection.

A I would have to say a week or two before January 2nd.

THE COURT: That is 1969?

THE WITNESS: That's correct, sir.

Q Can you relate the conversation you had with Mr. Duboff at that time on the telephone?

A Yes. He told me that he wanted two accounts, two customer accounts forms sent out, one to Mr. Harris and one to Mr. Morganstin, and those accounts were his accounts and Mr. Deutsch's accounts, that any trading that was done in those accounts was to be done by either Mr. Deutsch or Mr. Duboff, that they were going to direct all trades out of the account, that we were not to do anything with them except take instructions.

Q Was there anything said with respect to the manner in which or the amount of shares you were to place into these accounts?

MR. ROBSON: If your Honor please, I object to the leading.

THE COURT: Sustained.

(At the side bar.)

MR. FEFFER: We intend to demonstrate that the accounts of Morganstin and Harris as noted in the bill of particulars were nominee accounts for Deutsch and Duboff and in doing that the government feels that it can go into other areas of inquiry to demonstrate that precise fact. He is not going to be mentioning a specific stock transaction, but I think it is important, at least in terms of the relevance and probative value of the proof, that if these accounts are traded on every occasion equally, that goes to showing they are accounts fro Deutsch and Duboff, but there was one occasion when it was not the same and I would like to elicit that from the witness, because the reaction to that is probative of the fact that the Morganstin and Harris accounts were the accounts of or for Deutsch and Duboff.

certainly would not get excited if on one transaction, and I believe it was a small one, one account received 1,500 shares, or whatever, and the other account didn't. It is the manner in which they treated these accounts that we will argue they were more than just accounts in the name of a father-in-law and brother-in-law, but they were in fact their accounts and their money.

MR. SEGAL: I don't know that that goes to demonstrate that fact, not does the fact that the prejudice that would be included in the introduction of this on -- can we ignore that? The prejudice far outweighs the probative value.

THE COURT: Since Richard Packing Company is not mentioned and this is not in the center of the target, but, I must say, off to the side, I will sustain the objection.

(In open court.)

Q Mr. Shwidock, did Mr. Deutsch and Mr. Duboff have accounts in their own names at Kelly, Andrews & Bradley?

A No, sir, they did not.

Q Were Mr. Deutsch and Mr. Duboff associated or affiliated with Kelly, Andrews & Bradley in any way?

A No, sir.

Q In terms of trading, Mr. Shwidock, can you tell

the Court and jury the largest accounts at Kelly, Andrews & Bradley?

A Yes. The Harris and Morganstin accounts.

MR. BLOCK: What? I didn't hear that.

THE WITNESS: The Harris and Morganstin accounts.

Q I am going to show you 28-A through 28-W, and 27-A through 27-V, and ask you to look at these and to identify them, if you can, without saying what is contained in each of these items.

MR. SEGAL: Was that V or B?

MR. FEFFER: 27-A through 27-V, 28-A through 28-W.

(Pause.)

A Yes, I can.

Q Are these checks of Kelly, Andrews & Bradley?

A Yes, they are.

Q Do they each contain your signature?

A That is correct, they do.

MR. SEGAL: I take it that the testimony about these being the largest accounts at Kelly, Andrews & Bradley relate solely to Richard Packing stock?

MR. FEFFER: That was not the question, your Honor.

THE COURT: It was a much broader question and

Why, New Dimension may have been set up for many other reasons. Whether New Dimensions was for the purpose of concealing their principal interest in the company is irrelevant and highly prejudicial. What is relevant is, did they in fact control the trading in New Dimensions in Richard Packing stock?

THE COURT: I think that there are other aspects of testimony which would be germane here, having listened to the Government's offer of proof --

MR. BLOCK: May I be heard before you rule?

THE COURT: Yes, of course.

MR. BLOCK: I haven't said anything.

Your Honor, I feel again that this is so far removed from the conspiracy in this sense: That the evidence so far shows Mr. Cohen and his financial advisor, Mr. Deutsch. Now, on this record, Mr. Deutsch, who presumably, from Cohen's point of view, was with a reputable stock exchange house, turns out to be a conniver, you know, on the basis of the evidence so far, a conniver nonpareil, and for this evidence to come in in a case where Cohen is involved in the charges here, which is essentially manipulation, showing all sorts of side deals that they had, the relevance and materiality is beyond me, and I therefore would again renew my essential position, which is that

Cohen should be severed or a mistrial should be declared as to him.

THE COURT: The Government indicates they're leading up to the ultimate proof of substantial sales of Richard Packing stock to the Denver funds, and this is the means whereby they are getting there. They are going to show this as background, they're going to go into the Dimension background.

MR. BLOCK: It seems to me this could be omitted.

MR. FEFFER: Your Honor, with respect to Mr. Cohen we will demonstrate that Mr. Cohen had an account at Kelly, Andrews & Bradley by some strange circumstance. We will also demonstrate he had an account at New Dimensions, as far as I know.

MR. ORENSTEIN: Where is that relative?

THE COURT: I have heard enough to overruled the objection, which has been made by all three counsel to this conversation going in.

(In open court.)

BY MR. FEFFER:

Q Mr. Shwidock, I am going to ask you again to relate the conversation with Mr. Duboff and Mr. Deutsch at Jaffee & Company in June of 1969, please.

A Yes. He asked me to come over to Jaffee & Company and said that they were interested in buying out the Kelly, Andrews & Bradley. They were tired of being -- not they were tired, they were doing so much over-the-counter business that they felt that they should be involved in an over-the-counter house. It would be impossible under the present set up that they were involved in as registered representatives with a member firm to

become principals or active in an over-the - counter firm.

So they wanted to buy out the Kelly, Andrews & Bradley, they wanted to buy out Dan Driesman's interest in Kelly, Audrews & Brdaley for the cash that was in the checking account and revamp the stock distribution.

I was to receive 10% of the stock in Kelly, Andrews, plus a trading account, salary and expenses, and the balance of the 90% would be put in the name of Stanley Ryback with the understanding that Ryback would have just a very, very minor interest in this thing and the balance would be controlled by Deutsch and Duboff.

They asked me to get back to Dan, get back to them as soon as possible; that if I was unable to make a deal with Dan Driesman, that they were going to be forced to open up their own brokerage house, make some sort of a deal with another brokerage house.

Q Did you in fact speak with Driesman?

A Yes, I did.

Q Where didthis take place?

A Back at the offices of Kelly, Andrews.

Q Can you tell the Court and jury what you said to Mr. Driesman and what he said to you?

THE COURT: This conversation will be admitted

subject to connection as to all three of the defendants here before this Court and jury.

A Yes, I related the conversation I had had with Mr. Duboff and Mr. Deutsch, and I asked DAn would he be interested in making some sort of a deal and Dan at that time said that he wasn't interested in leaving or giving up his stock or interested in Kelly, Andrews, but that if I was intent upon making a deal that he would go along with it.

I told him at that time I wasn't intent upon making a deal.

Q Did you have another conversation with Mr. Duboff in connection with this?

A Yes. A few days later.

Q Where did this take place?

A On the phone. Mr. Duboff called me and asked me what our decision was, and I told him that there was no deal. He got very upset and said, "You know, you're a dummy, you're making a bad move. It's a mistake. And you can make yourself a lot of money being with us."

I said, "That's the decision we have come to and that's the way it's going to have to be."

Q Did you have an occasion to speak with Mr. Duboff in this same connection at a later date?

A Yes, sir, let's see, about roughly two months later. Sometime in August. I believe it was in August of 1969.

Q Is that your best recollection as to the approximate time?

A Yes, it is.

Q Where did this conversation take place?

A Again, on the phone. I had called Stanley Duboff and told him I heard a rumor in Wall Street that a new firm was being formed by the name of New Dimensions and that he and Bernie Deutsch were behind the company .

Q What , if anything, didhe say to you?

A Well, he laughed and he said, "Well, you know how these rumors get started, and you just take it for what it is worth."

Q Do you know a Jack Rothman?

A Yes, sir, I do.

Q Who is Jack Rothman?

A He is a friend of mine, and old friend of mine.

Q Did you have an occasion to speak with him some time during the fall of 1969?

A Yes, I did.

Q Can you give the Court and jury your best

recollection as to the approximate date of that conversation?

A I would say some time in September, I guess, of 1969. I think it would be September of '69.

Q In the fall of 1969; is that correct?

A Yes.

Q Can you tell the Court and jury where the conversation took place?

A Yes, on the phone.

Q Who initiated the call, if you can recall?

A I don't recall who initiated the phone call but I know I spoke with Jack Rothman on the phone.

Q What did you say to Mr. Rothman and what did he say to you?

MR. SEGAL: I object, your Honor.

THE COURT: Very well. Is this the same individual who is known as Somer Jack Rothman?

MR. FEFFER: That's correct, your Honor.

THE COURT: This conversation will be received subject to connection as to all of the defendants here on trial.

A Jack told me that he had been -- that he was going to work for New Dimensions, a new firm being formed, orhad been formed, and that Bernie and Stan were behind the

company; that he had gone down and talked to them about it and he's going in as their cashier

MR. FEFFER: I have no further questions, your Honor.

THE COURT: VEry well.

MR. SEGAL: Your Honor, may we come to the bench, please?

THE COURT: Yes. I would suggest that this would be a more than appropriate time for the jury to have what is going to be a somewhat longer than usual recess. You have been sitting very quietly and attentively since a shade after 9:30, and I note that it is now a shade after 11:30.

We will take what will probably be a 15 or possible 20-minute recess because of some matters I have to take up with counsel, and then we will proceed to approximately a quarter or one when we will take our luncheon recess.

The usual admonition applies, don't discuss the case among yourselves and keep an open mind on all facets of the case.

The jury is excused for approximately fifteen minutes, maybe a little bit longer.

(Jury excused.)

2 rmmch

****

1090

I was also prepared to delete:

"This proof the Government proposed is based solely upon the testimony of its witness, Bernard Shwidock. Since you are the judges of the facts, it is for you to determine whether the Government proves that allegation through means other than these checks. What other proof they may offer for your consideration is something we must all wait to see."

I think the record is now clear because you have read into the record what you proposed, and I have just read into the record what I would have deleted from your proposal.

MR. SEGAL: What you have read, your Honor, are Paragraphs 3 and 5 of what we have referred to?

THE COURT: That is correct.

MR. BLOCK: If your Honor please, before your Honor calls in the jury, I want to very briefly renew the motion that I made in the alternative for a severance or a mistrial as to Cohen in the light of the testimony now on direct examination that we have heard from Mr. Schwidock, which goes considerably beyond what your Honor read in the grand jury, and what I am alluding to, in particular, is Shwidock's own admissions about his own involvements with the law, notably his tax evasion, and what

we have here, particularly in the light of his statement, which he made yesterday in his opening testimony, that this deal he claims to have had with Deutsch and Duboff was to be kept secret, and no linking of Cohen to that at all, and I say that in the light of particularly the income tax evasion on his part, and it is very easy for the jury -- even a jury can make the necessary inference that these cash payments to Deutsch and Duboff constituted a violation of the Internal Revenue laws, and here is Mr. Cohen, who has relied for financial advice on two lawfully registered representatives of a prestigious brokerage house, to use the words of the prosecutor in his opening statement, and he is going to be smeared and hopelessly prejudiced by this testimony in this record, your Honor.

There is no way of getting around the prejudice resulting from his associating with men who have been described in these terms by Mr.Shwidock, and I therefore urge you, with all the earnestness at my command, your Honor, to grant this motion at this time.

THE COURT: The motion for a mistrial is denied.

MR. ROBSON: Your Honor, may I, for the record, make a brief statement in support of a motion I would like to make to strike so much of the testimony of this witness as relates to the arrangements for, and carrying out

****

THE COURT: I'm sorry, I beg your pardon.

Before the first question is asked, I would like to make a brief statement to the jury in the form of a cautionary instruction.

Bernard Shwidock has testified to exhibits which have been introduced by the government relating to the Peiss Bank. Specifically, Exhibits 24A, B, C, D, and E, which are checks totaling $90,000, which were shown to the jury yesterday.

These defendants are not charged with receiving this $90,000; rather, the information in this charge alleges that they received only $15,000, some of which was in cash and some by check.

There is no evidence before you at this time that any portion of these checks was conveyed to either of the defendants.

The government is merely introducing these checks as some proof in what it regards as one means by which the defendants obtained part of the $15,000 alleged in the information.

I direct that at this time you merely consider these checks and that part of Mr. Shwidock's testimony relating to the checks solely with regard to a determination of whether the witness did or did not pay through

this means part of the sume of $15,000 to the defendants.

We shall now begin with the cross examination. The first to examine will be Mr. Block. You may proceed, Mr. Block.

MR. BLOCK: Thank you.

MR. BLOCK: This is Page EJC-7.

I withdraw that question for the moment and I want to ask this question.

Q In connection with what you were to do in connection with this public offering in March of 1969, were you to be the billing agent? Is that the correct term for what you were supposed to do?

A I would say that is -- we were to bill it, yes. We would be the billing agent.

Q You were the billing agent?

A Yes, sir.

Q In other words, you were not the underwriter at all?

A Oh, no. No, sir.

Q You were the billing agent?

A That is correct, sir.

Q Now I go back to this.

Were you asked this question and did you give this answer at Page EJC-7 on November 16, 1973 under oath before the grand jury in this District:

"Q Now, one point. Did you receive a phone call from Deutsch to the effect that Milton Cohen of Richard Packing expected to receive $280,000 in this secondary offering?

"A Yes, I did.

"Q Did you at that point tell Deutsch that Cohen should send a letter to that effect?

"A That is correct.

"Q Because you wanted to have that for the record?

"A That is right."

Were you asked those questions, sir, and did you give those answers?

A Yes, sir, I did.

Q By the way, in connection with Exhibit F that you have in front of you, do you see that sentence, the second sentence, that reads, "I would appreciate your handling of the sale"?

A Yes, sir, I do.

Q You weren't really going to handle the sale, you were just going to be the billing agent; isn't that right?

A Well, I was going to be the billing agent and I --

Q So you would , isn't that correct?

A No, you would be handling a sale.

Q In a certain sense?

A Yes.

Q To the extent of doing the billing?

A That is correct.

Q But in other words, you wouldn't be handling the sale in the sense of doing the selling, isn't that right?

A We were not selling the stock, no.

Q You were not selling it?

A No, sir.

Q So, would it be fair to say, sir, that this second sentence of this letter --

MR. BLOCK: I withdraw it.

Q Does my reading of the grand jury testimony to you, plus the mistake in the second sentence of Exhibit F which I have just read to you, lead you to recall that what really happened was that the message from you to Cohen went through Deutsch and not from you to Cohen directly? Does it refresh your recollection that that is really what happened? Yes or no?

MR. FEFFER: Objection, your Honor. I am not sure -- what mistake is he referring to?

THE COURT: Let me find out from the witness. It is a rather long question.

MR. BLOCK: That is true.

THE COURT: Do you understand the question?

THE WITNESS: I believe I do, your Honor.

THE COURT: All right. If you do, I would ask

3523 and let you look at that, and ask you if that refreshes your recollection that in June of 1972, in January -- on January 30th of 1973 -- well, both on January 30th of 1973, at least on two occasions you had been in there?

A Right.

MR. FEFFER: What are the numbers of these?

MR. SEGAL: 3524, 3522, 3523.

THE COURT: Do those refresh your recollection that rather than having been in to the U. S. Attorney's office on one occasion, you had in fact been there twice prior to your going in in May of 1973?

THE WITNESS: Prior to May of 1973, according to this, your Honor, I was only in once. This second one is June of 19- -- I'm sorry.

Q June of '72.

A I'm sorry. I apologize. I completely forgot about this. I don't recall this but --

Q Does it refresh your recollection that, in fact, you were there on two occasions?

A I don't remember this one at all, but if it is there, it's there. I can only remember the one time.

Q It's possible, though, it was two?

A It's possible, yes.

Q You eventually, on October 22, 1973, pleaded guilty

to the conspiracy count, did you not, of the indictment that was filed against you on May 8th of 1973?

A Yes, I did.

Q At that time, when you pleaded guilty, do you recall that you had been charged in that conspiracy count with conspiring with Raymond Weiss, Abe Shrem and William Rosenthal, as well as Kelly, Andrews, to commit certain offenses against the United States, that is, some violations of the federal Securities Laws?

A That is correct.

Q Do you remember that it was a part of the conspiracy that in connection with a public offering and a registration statement that had been filed you wilfully and knowingly and directly and indirectly would use, and cuase the use of, the mails to transmit envelopes containing prospectuses relating to public offering, which prospectuses didn't meet the requirements of Title 15, U.S. Code, Section 77j?

A Yes, sir.

Q And do you recall also that it was further a part of that conspiracy that you and your co-conspirators unlawfully, wilfully and knowingly would directly and indirectly, by devices, schemes and artifices, to defraud --

A Yes, sir.

badly.

Q Mr. Shwidock, had you done the things which were alleged in that indictment?

MR. FEFFER: Objection, your Honor, I think he's already answered he entered a plea of guilty and fully responded to the question.

MR. SEGAL: I'm responding to that plea of guilty.

THE COURT: Overruled. Let me start with this: Were there a number of things charged in that indictment?

THE WITNESS: Yes, sir.

THE COURT: Were there a number of charges contained in this conspiracy count?

THE WITNESS: Yes, sir.

THE COURT: Had you done any of the things which were charged in the conspiracy count?

THE WITNESS: Yes, sir.

Q You recall, do you not, that despite your guilty plea, at a later time a superseding information was returned; do you remember that?

A Yes, sir, I do.

Q And it was explained to you, was it not, that an information --

*****

dhv 12 Shwidock-cross 1269

Q You said you were interviewed by Mr. Walker before?

A Yes, sir.

Q And can you tell us for how long?

A Approximately an hour.

Q Was Mr. Walker the same Mr. Walker who threatened you?

MR. FEFFER: Objection, your HOnor.

MR. SEGAL: I will rephrase the question.

Q Was Mr. Walker the same Mr. Walker who said to you, after asking your age, that he would send you to jail for life or that you would be up for life for the problems that you had incurred?

A Well --

THE COURT: Did Mr. Walker ever say that to you?

THE WITNESS: Well, you have combined two conversations -- two statements into one that you attributed to Mr. Walker. He only said one portion of that and it was the same Mr. Walker.

Q It was the same Mr. Walker?

A Yes, sir.

Q What part did he say to you before?

A It wasn't anything about going to jail for life.

*****

MR. SEGAL: Your Honor, this is not outside the issues.

THE COURT: All right, all right, ask your next question. I hope you're getting to something, and if you are, you are entitled to. If not, I know you recognize the consequences that you pay.

Proceed.

Q You are stating now that you never obtained any loan on the basis of stock which was pledged, or buy and sell tickets which were pledged relating to Electric Gas Dynamics?

A I never obtained a loan, no, sir, I didn't.

Q Did anybody else obtain a loan on your behalf?

THE COURT: So far as you know.

A On my behalf?

Q Yes.

A Not on my behalf, no, sir.

Q On whose behalf then, using Electric Gas Dynamics buy and sell tickets?

A Not buy and sell tickets.

Q What were they?

A It was stock -- a loan was obtained by Stu Schiffman in Electric Gas Dynamics stock.

Q What did he use as collateral to get the loan?

Take 5A a.m. bmv 1 Shwidock-cross 1320

*****

MR. SEGAL: May I read this, your Honor?

THE COURT: You may.

(Mr. Segal reads to jury from Defendant Deutsch's Exhibit E, in evidence.)

Q With regard to that communication, did you ever execute on this communication?

A No, sir.

Q So at least in one instance you were solicited by Reiss & Company. Were there any others?

A No, sir. That is a letter of indication of interest in an issue, which is quite standard in the industry, when an issue is coming out, and I don't consider that a solicitation of business.

Q You mean a --

THE COURT: You mean someone is requesting stock in connection with an issue that your firm would be underwriting?

THE WITNESS: Yes, sir.

Q Someone writes a letter and says that they want you to subscribe for their account in the amount of $30,000, you consider that an academic inquiry?

A In 1968 and '69, the answer is yes.

Q In other words, you would go out in the street, pick up $30,000 worth of stock for them, and you would do

*****

bmv Shwidock-cross 1326

Q I call your attention to the fact that there is an account --

MR. FEFFER: Objection, your Honor.

THE COURT: Just point to something, and then you can ask a question.

Q I point to a portion of the lower document -- this Exhibit G for identification contains two documents, is that correct?

A That's correct.

Q And I'm referring to the one which is on the bottom, and I will refer to the top portion and ask you whether by reading that it refreshes your recollection as to any relationship that your firm, Kelly, Andrews & Bradley, might have had with regard to any account in Switzerland?

A No, I would say --

THE COURT: No, it doesn't?

THE WITNESS: No, it doesn't.

Q I refer to the bottom part, which lists the name of the bank, and ask you whether or not that portion refreshes your recollection as to any business transacted with or from that particular entity?

A It doesn't ring a bell with me at all, Mr. Segal.

*****

4 rmmch Bock-cross 1330

clothing from them.

A Not offhand, no.

Q By the way, did you charge life insurance to Kelly, Andrews & Bradley, too?

A We each had life insurance policies, I know.

Q Was that authorized to be paid for by the company?

A Yes, sir, life insurance policies were.

Q Do you know with what insurer that was?

A I believe it was with Travelers.

Q Did you have an apartment in Florida?

A No, sir.

Q Can you tell me why it was that in August of 1970 you would be paying a thousand dollars to the Roney Plaza Apartment?

A I wasn't with Kelly, Andrews & Bradley in August of 1970.

Q Do you know anybody had one down there?

A No, sir.

MR. FEFFER: Your Honor, I object.

THE COURT: Well, he didn't know. I don't know why a question like that would be asked, but he didn't know and let's leave it in the record.

Let's proceed.

Q You cashed a number of checks to cash, didn't you

Q Are those usually called customer cards?

A New account forms or customer cards, yes.

Q Are these cards then filled out with the relevant operating instructions regarding the account and how it is to be run?

A As a rule, yes.

Q And wouldn't the designation that it would be a discretionery account be included as part of the information on such a card?

A Yes, it could be.

Q Do you recall having accounts for Morginstin and Harris at the Kelly, Andrews & Bradley office?

A Yes, sir, I do.

Q Were those run as discretionery accounts?

A By Kelly, Andrews?

Q Yes.

A No, sir.

Q Or by anyone else? Did Mr. Deutsch or Mr. Duboff have discretion as to the operation of those two accounts?

A I would think so.

Q Under the rules of the New York Stock Exchange you were under an obligation, were you not, to make sure that the accounts which were run by your office were in

conformity with the rules?

A We were not members of the New York Stock Exchange.

Q As members of the NASD?

THE COURT: The NASD is the National Association of Securities Dealers, ladies and gentlemen.

A I believe we would have to have the authority.

Q Having allowed those accounts to operate like that, is it your present recollection that those were in fact given with regard to the Morginstin and the Harris accounts, that is, a discretionery basis for running those accounts?

A I don't follow your question.

Q Did you have a trading authorization in Kelly, Andrews & Bradley which would enable transactions in the Harris and the Morganstin accounts to be done by either Mr. Deutsch or Mr. Duboff?

A It didn't specify Mr. Deutsch or Mr. Duboff, but there were new account form in Kelly, Andrews & Bradley, yes.

Q As far as the Morginstin and the Harris accounts were concerned, were they enabled to be run as discretionery accounts?

A They were enabled, yes.

THE COURT: I thought the witness had finished, sir.

THE WITNESS: Yes, I have.

Q I will play a portion of a recording for you. Listen to it and then I will ask you some questions about your recollection being refreshed.

(Pause.)

Q Having listened to that recording, can you state to me whether or not it is your present recollection that you stated to Mr. Deutsch on the occasion of September 20, 1973, while you were relating a conversation you had had in the U.S. Attorney's office, that there were reports in the files because it was "A service that we subscribe to"? Do you remember saying that?

A I'm sure I did.

Q That you were introduced to the bank and "We got business but one was not predicated on the other"? Do you remember saying that?

A As I say, I'm sure I did.

MR. SEGAL: No further questions, your Honor.

THE COURT: Thank you, Mr. Segal.

Mr. Robson.

statement with the NASD that it is making a market in stocks stocks and that it is now a supplier of that particular stock; is that correct?

A With the NASD? No.

Q Who do you file it with?

A The National Quotation Bureau.

Q And then, thereafter, on each day that you are acting as a market maker or trader in that particular stock, you submit a figure to the National Quotation Bureau at which you are prepared to buy and sell at least 100 shares of that stock; is that correct?

A Absolutely correct.

Q As a general rule, houses that specialize in buying and selling stocks for customers do not trade those stocks or make markets in those stocks; is that not correct?

A I would say so, yes.

Q They generally [illegible] firm like Kelly, Andrews & Bradley to obtain stock or to sell stock?

A As a rule, yes.

There are exceptions, but as a rule that is true.

Q And, in fact, that is what was being done by Jaffee & Company with Kelly, Andrews & Bradley while you were there?

A Yes, sir.

Q Specifically with reference to the stock of Richard Packing Company, Jaffee & Company did not make a market in or trade that stock, did it?

A No, sir, they did not.

Q So that when Jaffee & Company obtained an order from a customer for stock of Richard Packing, it would have to turn to a trading firm like yourself, is that correct?

A Absolutely correct.

Q And from time to time, in fact, they did turn to your firm to acquire stock, is that not correct?

A That is correct.

Q Likewise, from time to time, when Jaffee & Company had an order from a customer to sell stock of Richard Packing, the practice would be for them to come to a firm like yours to sell the stock, is that correct?

A That is correct.

Q It is customary, is it not, for various registered representatives and sometimes other persons affiliated with brokerage firms to develop an interest in particular companies which go beyond merely buying and selling the stock; is that correct?

A Yes, sir, it is.

Q In fact, these registered representatives will assist the companies in which they are interested in obtaining business, obtaining financing, and in other ways, in order to improve the business of the company; is that correct?

A That is absolutely correct, yes, sir.

Q Was it not a fact during the years of 1968, 1969, 1970, and prior thereto also, that Jaffee & Company was known as a brokerage firm which took very active interest in various companies?

A Yes, sir.

Q Was it not also a well-known fact that Mr. Deutsch and Mr. Duboff, as registered representatives of Jaffee & Company, also took active interest in various companies?

A That is correct.

Q Among the companies was Richard Packing Company, is that correct?

A That is correct.

Q It was well known in the Street, by you and other persons, was it not, that both Mr. Deutsch and Mr. Duboff had an active interest in and were in many ways providing assistance to Richard Packing Company?

A Yes, sir.

7 rmmch Shwidock-cross

Q Was it not also a practice when a brokerage firm was known to have an active interest in a particular company like Richard Packing Company for various other brokerage firms who were interested in either purchasing or selling stock of that company to come to Jaffee & Company to find out where they could sell or where they could buy?

A Yes, sir, that is correct.

Q Another brokerage firm could not buy from Jaffee & Company or sell to Jaffee & Company since they were not making a market in Richard Packing?

A That is correct.

Q You have testified here that during the period from somewhere in September or October 1968, through the balance of your relationship with Kelly, Andrews &Bradley, that Messrs. Deutsch and Duboff directed trades to Kelly, Andrews & Bradley?

A Yes, sir.

Q And by that do I understand that you mean that they told you that there was somebody interested in either buying or selling the stock, the stock of Richard Packing, and they told you about another firm that was interested in being on the other side; is that correct?

A No -- well, they would say that "You are

selling" or "You sold." It is an active type thing. It is not that -- it is just an active type thing. "You sold" or "You bought from" --

Q In effect, they were telling you that they knew of both a seller and a buyer --

A They gave me both the seller and the buyer.

Q That being because they could not handle that particular transaction because it involved two brokerage houses?

A They were not making a market in the stock.

Q So they would have had to come to somebody who was making a market, whether it be Kelly, Andrews & Bradley, or somebody else?

A Yes, sir.

Q And you knew, did you not, that you were not the only firm making a market in Richard Packing to whom business like this was being directed by Jaffee & Company?

A That's right.

Q Because that was a regular course of business, was it not?

A Yes, sir.

Q And there was nothing improper about them directing to you the buys and the sells that were called to their attention?

9 rmmch Shwidock-cross

MR. FEFFER: Objection to that question, your Honor.

THE COURT: Sustained.

Q Did you believe you were doing anything improper when you handled those transactions?

A No, sir.

Q Getting back to the meeting of September 13th -- withdrawn -- the meeting sometime after September 13th, when you asked for Mr. Deutsch and Mr. Duboff to turn over some trading business to you, what was their reply? Do you recall?

A I'm sorry?

Q We are talking about the first meeting.

A That was prior to September 13th.

Q What did they say to you after you asked them for some business?

A That they didn't know -- they would much rather not give us any business at the moment, we were too new, we were not in operation, and they wouldn't make any commitments regarding business, that if we were interested or if I was interested, to take a good look at Richard Packing, they are interested in it, and it has potential, and I could go into the sheets and trade.

Q You could go into the sheets?

A Could go into the sheets, that is correct.

Q By that you mean you could submit a quotation to the National Quotation Bureau and become a trader?

A That is correct.

Q They didn't instruct you to?

A No, sir, they did not.

Q They did indicate, however, that they were concerned about doing business with you because you were very new?

A That is correct.

Q And being a trader requires a great deal of skill, does it not?

A Yes, sir.

Q And experience?

A And luck.

Q Everything in life requires a certain amount of luck.

A Yes, sir.

Q As a matter of fact, in functioning as a trader, what you must do from day to day is to decide at what price you are prepared to buy or at what price you are prepared to sell in competition with many other brokers who are doing exactly the same thing, is that correct?

A That is some of it, yes.

*****

Q Did you also call other brokers who were making markets in the stock to see what they were buying at or selling for?

A In Richard Packing?

Q Yes.

A Possibly.

Q As a matter of fact, when you had conversations with Mr. Duboff or Mr. Deutsch, didn't you tell them what you thought the market should be and they would say, "Okay," or "Go up" or "Go down"?

A That would be part of our conversation. I would have told them I called other brokers and I did check a price and so-and-so is making it this way, and they would confer on the price of the stock.

Q And sometimes they would tell you that you were paying too much and you should come down?

A Yes, sir.

Q These conversations were designed, were they not, for the purpose of determining what was the best price that you could buy stock at or the best price that you could sell at; is that correct?

A Yes, I guess so, yes.

Q Wasn't that really the only consideration?

A Yes, sir.

Q All right.

A It would be.

Q In other words, Mr. Deutsch or Mr. Duboff never said to you, "Pay $25 a share"if you could get stock at $23 a share, did they?

A Oh, no.

Q And they never said to you to sell at any particular price except because they thought that is what you could get for it?

MR. FEFFER: Objection, your Honor.

THE COURT: Sustained.

Q When they told you that you should sell at a particular price, was that because they told you that they thought that was what you could get for it?

A Yes.

MR. ROBSON: Your Honor, may I inquire as to when you propose to recess during the afternoon? Because I'm going to a slightly different subject and maybe this is the time to take a recess.

THE COURT: In view of that, I think this might be an appropriate time for us to take our midafternoon break.

Ladies and gentlemen, we will take a ten-minute recess. Please don't discuss the case among yourselves.

Continue to keep an open mind on all phases of the case.

We will resume in ten minutes and we will be terminating today something around 4:30. It is my intention to ask you to come in Monday at 9:30 to resume hearing the case and I just wanted to tell you that before we took this break.

Ten-minute recess.

(The jury left the courtroom.)

THE COURT: All right, gentlemen. We will take a break.

I finished those and I will do these. What are these? I just started them. Who gave me these?

MR. FEFFER: We did.

MR. SCHATTEN: We did.

(Recess.)

(In open court; jury present.)

B E R N A R D S H W I D O C K, resumed.

THE COURT: You may proceed, Mr. Robson.

BY MR. ROBSON:

Q Now, Mr. Shwidock, there came a time, I think you testified, after the first meeting with Mr. Deutsch and Mr. Duboff, when you were told that your company was too new to do business with, when you had another meeting with Mr. Deutsch and Mr. Duboff. Is that correct?

A That is correct, sir.

Q And when was that?

A I would say approximately a week or ten days later.

Q All right.

A A week or ten days after we opened up our offices.

Q About a week or ten days after?

A Yes, sir.

Q It would have been about what, September 20th, 25th?

A Towards the end of September, correct.

Q Towards the end of September?

A That is correct.

Q Prior to that meeting, you had in fact started to trade Richard Packing stock; is that correct?

A Yes, sir, I did.

Q In fact, during the month of September you had purchased approximately 1,200 shares of Richard Packing stock between September 13th and September 26th; is that correct?

A I would have to look at the blotter, but I assume you have, so --

Q These figures are taken from a blotter, yes.

A All right, sir.

Q So that prior to your second conversation with Mr. Deutsch and Mr. Duboff, you had already purchased approximately 1,200 shares of Richard Packing Company stock; is that correct?

MR. FEFFER: Objection, your Honor. It depends upon when the meeting was.

THE COURT: Yes. I think that is going to have to be taken in order. I will sustain an objection to form.

MR. ROBSON: He just testified that the meeting was the latter part of September.

MR. FEFFER: He said a week or ten days after the 13th.

THE COURT: That's what I heard, too.

Perhaps if you go back, you would be better off. Do you want the transcript read? You may have it. What is your preference?

MR. ROBSON: Rather than have it reread, let me check with the witness again.

Q The second meeting, you say, was about a week or ten days later after you had opened?

A That is correct, sir.

Q And you opened on September 13th; is that correct?

A That is correct.

Q Do you have any way of placing that meeting specifically?

A No. Nothing specific, no.

Q A week later would be September 20th; is that correct?

A That is correct.

Q Tne days later would be September 23rd?

A Correct.

Q According to the trading records which are in evidence here, by September 16th, which was three days after you had opened, you had purchased 700 shares of Richard Packing?

A Correct.

Q So that would have been definitely prior to any meeting; is that correct?

A Oh, yes, that is correct.

Q On September 24th, eleven days later, you purchased 300 shares of Richard Packing, and on September 26th another 200 shares?

A Right.

Q Do you know whether that was before or after?

A I don't know exactly, but I would say about the time that we had our meeting.

A Right.

Q -- that you testified that Mr. Deutsch and Mr. Duboff now changed their mind and offered to do business with you on the terms that you have earlier described? Is that correct?

A That is absolutely correct.

Q Some time later, and I would appreciate it if you could tell us when, you met a man by the name of Jack Reiss; is that correct?

A That's correct.

Q When was that?

A It had to be some time in October, I'm sure.

Q Do you recall, as you sit here now, when it was or are you guessing basically?

A No, I'm just guessing based upon time element, that is all.

Q Can you tell us specifically:

You said you were sent upstairs. Can you tell us where upstairs you were? Were you in the off ice of Jaffee & Company?

A Yes, sir, I was.

Q Were they located on more than one flor at the time?

A Jaffee?

Q Yes.

A I don't think -- no, they weren't, no.

Q If I understood your testimony correct, and correct me if I'm wrong, you said you were at the office of Mr. Duboff and Mr. Deutsch, and you were then told to go upstairs to meet somebody, and you went upstairs and met Mr. Riess?

A That's correct.

Q Now, where did you mean when you said "upstairs"?

A In 50 Broadway.

Q What office would you go into upstairs?

A I don't remember the name of the office.

Q You have no recollection at all?

A I don't remember the floor. I knew I had to go upstairs, that I remember.

Q Was it the office of the Reiss Bank?

A No. I'm sure of that.

Q Was it an accountant's office?

A It could have been an accountant's office. Yes.

ke 4A

Q If I recall your testimony correct, and again, correct me if I am wrong, you stated you met another individual there with Mr. Reiss who was an accountant.

A I might have said that. I don't remember saying that, but I met another individual in the office, I remember that.

Q Do you recall that he was an accountant?

A He might have been, yes.

Q Do you remember what his name was?

A No, sir, I don't.

Q Could it have been Mr. Sysman?

A No, sir.

Q Is Mr. Sysman an accountant?

A Yes, he is.

Q Was Mr. Sysman at any time an accountant for Mr. Reiss, Jack Reiss?

A I really don't know.

Q Where did you first meet Mr. Sysman?

A I guess 1969.

Q Do you remember when in 1969?

A Well, it had to be on a Sunday morning, bedause I met him at a bowling alley.

Q Do you remember what month of the year on Sunday morning?

A No, I'm sorry.

Q You have no recollection of that?

A No. I just know I met him at the bowling alley. I bowled against him.

Q You remember meeting Mr. Deutsch and Mr. Duboff some time a week prior to September 13th, but you don't remember when you met Mr. Sysman in 1969, is that correct?

A Yes, sir, that's right.

Q Do you remember whether it was the early part of the year?

A I would say the early part of the year.

Q During the first three months of the year?

A Possibly, possibly, yes.

Q What were the circumstances under which you met Mr. Sysman?

A I bowled against him and that is how I was introduced to him.

Q Where did you bowl against him?

A In Engelwood Cliffs, 9W Bowling Alley.

Q It was just sort of a pick-up game?

A No. We bowled in a league. I had joined a league and started to bowl on Sunday mornings.

Q And he was a member of that league?

A Yes, sir.

Q Did you thereafter see him frequently?

A On Sunday mornings.

Q You saw him every Sunday morning thereafter?

A Yes, sir.

Q Did there come a time when you learned what his business was?

A Yes, sir.

Q When did that happen?

A I would say a couple ofmonths later, I guess. I would say a few months later.

Q What business was he in?

A He was a CPA.

Q Did you learn anything about the nature of the accounts which he handled?

A No, sir.

Q Did there come a time when you learned a brother-in-law by the name of Shachor?

A I have never heard that name before.

(Pause.)

Q Did there come a time when you learned that he had a brother-in-law by the name of Shachor?

A I never heard that name before.

Q Did there come a time when you learned that he

had in-laws in Israel or in Europe?

A Yes, sir.

Q When did that occur?

A In the summer of 1969.

Q What did you learn about his relatives?

A At that time, just that his wife had family in Israel.

Q Did there come a time when you learned that he had relatives or family in Switzerland?

A No, not in Switzerland, in Israel.

Q Did you ever have occasion to discuss with Mr. Sysman the Reiss Bank?

A Yes.

Q Did Mr. Sysman tell you that his borther-in-law had been the manager of the Reiss Bank in Switzerland?

A No, he didn't.

Q You didn't know that?

A No, sir.

Q Does that come as a surprise to you today?

A It certainly does.

Q Did you ever have a conversation with Mr. Sysman about Jack Reiss?

A Not really. Just that I had mentioned him. He mentioned the Reiss Bank and I said I had met Mr. Jack Reiss,

and that was that.

Q In a conversation he did not tell you he had relatives who were connected with business with Jack Reiss?

A No. He was very --

Q Just yes or no.

A No. I'm sorry.

Q Did you ever hear of the name Joe Glasser?

A Yes, sir.

Q Who is Mr. Glasser?

A All I know is he is a client of Mr. Sysman.

Q Did you know that Mr. Glasser was a partner in the Reiss Bank in Switzerland?

A No, sir.

Q Does that also come as a surprise to you as you sit here today?

A Very much so.

Q Did you know that Mr. Glasser and Mr. Reiss had an interest in a bank in Israel known as the Bank Agudath, I think?

A No, I didn't.

q Didn't know that?

A No, sir.

Q Did you know that Mr. Sysman's brother-in-law was manager of the bank in Israel which was controlled by

Mr. Reiss and Mr. Glass?

A I knew he was the manager of a bank in Israel.

Q Did you know it was the bank controlled by Mr. Glasser and Mr. Reiss?

A No, sir, I did not.

Q Does that also come as a surprise to you?

A Very much so, yes, sir.

Q For how long were you engaged in business with Mr. Sysman? In first Bergen Investigators?

A Approximately two years.

Q During that period of time, two-year period of time, it is your testimony that he never mentioned that he had a relative who managed a bank, first, in Switzerland, and then in Israel for Mr. Reiss and Mr. Glasser?

A Exactly. He never mentioned those names in Israel or Switzerland.

Q Did you ever learn that Mr. Riess was connected with a large bank in Israel?

A No, sir.

Q Did you ever tell anybody in the United States Attorney's office or the SEC that Mr. Reiss had a large bank or had a branch in Israel?

A Had a branch in Israel, yes.

Q You did know Mr. Reiss had a branch in Israel?

A Yes, sir.

Q You misunderstood my question when I said a bank in Israel?

A That's correct, sir.

Q What bank was that a branch of?

A Reiss Bank.

Q Did you know that Mr. Reiss' partner in that branch in Israel was Glasser?

A No, sir.

Q Did you know that Mr. Sysman's brother-in-law was the manager of that branch in Israel?

A No, sir, I did not.

Q Firt Bergen Investors was a stock brokerage firm?

A Yes, sir, it was.

Q Did you also handle customers?

A Yes, sir, we did.

Q Was Mr.Reiss ever a customer ofFirst Bergern Investors?

A No, sir.

Q Was Mr. Glasser ever a customer of First Bergen Investors?

A I believe he was an account of First Bergen, yes, sir.

Q Was there an account by the name of Shachor?

A No, sir.

Q Were there any Swiss banks which were accounts of First Bergen Investors?

A No, sir.

Q Were there any Israeli banks or branches which were the accounts of First Bergen Investors?

A No, sir.

Q When was the First Bergen Investors formed?

A In 1971, early part of '71.

Q Ho w much capital was invested in First Bergen Investors?

A $25,000.

Q Who put up that $25,000?

A Mr. Sysman.

Q He put it all up?

A Yes, sir.

Q But you were 50-50 partners?

A Yes, sir.

Q Was any of that money money that belonged to you in a Swiss bank which was being given in this form?

A No, not at all.

Q You're sure of that?

A Absolutely.

Q You had no money in a Swiss bank?

A No, sir, I never have.

Q In fact, however, your partners at Kelly, Andrews & Bradley accused you of having money in a Swiss bank at one time, didn't they?

A Not to my face they didn't, no, sir.

Q Not to your face?

A No, sir.

Q They did accuse you of having taken $400,000 from Kelly, Andrews & Bradley, did they not?

A Yes, sir.

Q They accused you of having stolen $400,000 from Kelly, Andrews & Bradley, did they not?

A Yes, sir.

Q And included in that $400,000 was there not a claim made that you had deposited money in the Reiss Bank for your own --

A No, sir. The claim was that I had $400,000 in cash stashed away right here in this country.

Q Did they not state that a part of that cash had come by virtue of your having used the payments or alleged payments to the Reiss Bank?

A No, sir.

Q You're sure of that?

A Absolutely.

Q Did there come a time when somebody in the United States government accused you of having paid those funds to the Reiss Bank for your own business?

A No, sir.

Q That never happened?

A No, sir.

Q Did not the United States attorney tell you that he believed that the money that had been sent to the Reiss Bank was really your money?

MR. FEFFER: Your Honor, which U.S. Attorney is Mr. Robson referring to?

THE COURT: Any United States Attorney.

MR. FEFFER: He said "the" United States Attorney, your Honor.

Q Did not an Assistant United States Attorney tell you that he believed the money paid to the Reiss Bank was really your money?

A No, sir.

Q Did Mr. Doonan, who was an agent of the SEC ever tell you that he believed that money was your money?

A No, sir.

MR. FEFFER: Mr. Doonan, your Honor is not an agent of the SEC, for the record.

THE COURT: Yes, that' s correct. I know that to be a fact.

Q Did anybody connected with the government, including the Internal Revenue Service, ever claim to you or to your attorney, that the money which you sent the Reiss Bank was really your money?

A No, sir.

Q That never happened?

A No, sir.

Q Did you ever tell Mr. Deutsch that the government was claiming that that was your money?

A No, sir.

Q That never happened neither?

A No, sir.

Q Do you recall telling Mr. Deutsch in a telephone conversation which you had with him on September 20, 1973 that you were questioned about the payments to the Reiss Bank and that you had told them at the United States Attorney's office that those payments were for services and they refused to believe you?

A Along those lines, yes.

Q When they refused to believe you did they not tell you what they thought those payments really were for?

A I don't remember what they said. They didn't believe me, but I don't remember what they said in return.

Q You're sure they didn't say they believed you had taken that money for yourself?

A I'm sure they didn't.

Q Did they tell you they were convinced you had $400,000 buried in the ground somewhere?

A Yes, sir, they did.

Q Did they tell you where they believe you got that $400,000?

A Not specifically. Just in general.

Q What did they say, in general?

A Kickbacks and sharing in profits of accounts.

Q Did you ever have any investment in land in Israel, Mr. Shwidock?

A No, sir, I never have.

Q Did you ever have any kind of investments in Israel?

A No, sir, I never have.

Q Did you ever tell the accountant for Kelly, Andrews & Bradley that you had investments in Israel?

A No, sir, I never have.

Q Did Kelly, Andrews & Bradley ever have any investments in Israel?

A Not to my knowledge. Not while I was there.

Q Did you ever tell your accountant for Kelly, Andrews & Bradley that there were investments of Kelly, Andrews & Bradley in Israel?

A No, sir.

MR. ROBSON: May we mark this defendant Duboff's Exhibit C, for identification.

(Defendant Duboff's Exhibit C, marked for identification.)

Q I show you Defendant Duboff's Exhibit C, which is a piece of paper which was obtained from the files of the Government, and I call your attention particularly to the notation at the foot of that document, and ask you whether that refreshes your recollection that you told your accountant that the payments to the Reiss Bank in November and in June were with respect to an investment in land in Israel.

A That is not true.

Q That is not true?

A That is right.

Q And that doesn't refresh your recollection that you told your accountant that that was a fact?

A No, sir.

(Pause.)

Q When your employment was terminated by Kelly, Andrews & Bradley, you were charged, were you not, with having issued checks for various persons and firms in payment of items and services?

A Yes, sir.

Q What were the services that you were charged with having paid for which were in fact for your own personal use?

MR. FEFFER: Your Honor, I object to this. Mr.

Segal covered this in great detail and I don't know if it is necessary to go into it again.

THE COURT: Well, I know we had a conference on this and Mr. Robson did indicate there would be certain areas where he would inquire briefly and then get onto a different matter, and I assume that is what is about to occur here.

Q What were the services as distinguished from items? I am not asking you now about items of furniture or any other materials which were purchased, including automobiles, but I am asking you what services you paid for which you were charged with having purchased or paid for for your own personal use.

A The carpentry, plumbing, electrical --

THE COURT: Did that relate to your home?

THE WITNESS: Yes, sir.

Q Not the advisory services from the Reiss Bank?

A No, sir.

Q Isn't it a fact that that is what you were charged with, with having taken money ostensibly to pay the Reiss Bank and kept that for your own account?

MR. FEFFER: Charged by who, your Honor?

MR. ROBSON: By the people at Kelly, Andrews & Bradley.

THE COURT: Were you so charged by those people?

THE WITNESS: No, sir.

Q During the course of your activities at Kelly, Andrews & Bradley, when you were trading the stock of Richard Packing, was it not a fact that during the course of each day you would change the price which you were prepared to pay, or the price at which you were prepared to sell from time to time during the day?

A Yes, you could.

Q Is it not a fact that those changes in price were the result of what was taking place in the market, what prices you were being offered, and what prices you were getting?

A Yes, those factors are part of it, yes.

Q So that if at any particular point in time you had a bid price of, say, $30 a share, and an offer of $34 a share, meaning that you were prepared to purchase for $30 or sell for $34, if you were able to obtain a price of $19, for example, you might drop your bid to $19, if you discovered that somebody was selling for $19; is that correct?

A I don't understand the question. That could never happen, from $30 a share --

Q I'm sorry, at $29. In other words, if you had a

bid of $30 in mind and then learned that somebody else was selling for $29, you would drop your bid because you realized they could get it cheaper?

A That is correct.

Q If you had a bid of $30 and discovered that other sales were taking place at $34, for example, you would raise your bid in order to be able to get stock if you wanted stock; is that correct?

A That is not necessarily --

Q Depending upon the market --

A That could happen, yes.

Q In fact, in determining what price you were prepared to pay or to sell at, at any time that you were trading Richard Packing , your determination of the price was, in effect, based upon what other people were paying or selling for; is that correct?

A That could be.

Q What do you mean, it "could be"?

A Well, sometimes you just trade as you see it, or if you have a specific order to buy stock at a specific price or sell stock at a specific price.

Q Right.

A So, the market in this case might be just a relevant type of thing.

Q You would sell at the price you would hope to sell at or buy at, or the best price you could get, is that right?

A I would say so.

Q Did there come a time, Mr.Shwidock, when Kelly, Andrews & Bradley was suspended by the NASD from conducting business for a period of time because they had what is known as a net capital violation, that is, their assets were not sufficient?

A That is correct.

Q Do you remember when that occurred?

A It was prior to April 1st of 1969.

Q That was for a period of three weeks?

A Approximately three weeks.

Q So that you were really not permitted to function from about March 7th to about March 31st, approximately?

A We were, under certain restrictions -- we were permitted to function under certain restrictions.

Q You were not permitted to sell stock, were you?

A We could sell stock, providing we were selling it out of our stock position, liquidating position, or customer account sales.

Q Were you allowed to be involved in an underwriting at that time?

Q What was the price of Richard Packing when you started to trade it on September 13th?

A I don't remember the exact price, but if I refer to this --

Q I am suggesting you refer to that chart, which was taken from the trading records of Kelly, Andrews & Bradley.

A I would say on the 13th the stock ranged -- the low bid would be 25 and the high offering would be 30.

Q You paid what on the first trade?

A On the first trade I paid 26.

Q During the balance of the month of September, how many shares were purchased after the first 300 about which you said you were sure you had conducted that transaction before any arrangements with anybody?

A 900 shares, after the 13th, from the 13th to the 26th.

Q At what prices were those 900 shares purchased?

A 30 and 31.

Q Did you sell any of those 900 shares?

A Yes, sir, I did.

Q How many?

A 730 shares.

Q Were they not sold at approximately the same prices which you paid for them?

A Yes.

Q Indicating that you were unable to make either a profit or a loss on them, is that correct?

A That's correct.

Q In October there were two 5,000-share blocks acquired by Kelly, Andrews & Bradley, is that correct?

A That's correct.

Q Other than those two 5,000-share blocks about which I will ask you in a moment, how many shares were purchased by Kelly, Andrews & Bradley?

A In the month of October, 185 shares.

Q Do you consider that substantial trading?

A Well, on a buy side, no.

Q Okay.

On the buy side you would not consider that substantial?

A No, that isn't any volume on the buy side.

Q You did acquire 10,000 shares in two 5,000-share blocks; is that correct?

A That's correct.

Q Which you sold almost immediately, is that correct?

A Yes, that is correct.

Q Do you recall from whom and how you obtained those two 5,000-share blocks?

A Yes, from Jaffee & Company, Mr. Duboff.

Q Those blocks, do you know who they belonged to when you got them from Jaffee & Company?

A No, sir.

THE COURT: Both of the blocks were obtained in that way?

THE WITNESS: Yes, sir.

Q Were you advised by Mr. Duboff that these blocks had to be disposed of and to be disposed of at a price below the market, and that you could make a substantial profit by disposing of those stocks?

A No, sir, the direction on two of the trades, the first two trades that I see here, were at Mr. Duboff's direction, sell them to, and he named the both brokers --

Q That is what I understood. But not only that

you could obtain these two blocks of stock, that they could be obtained at a price below what the current market then was?

A Yes, sir. He told me that he could buy 5,000 shares at a price, yes.

Q Which was below the market?

A Absolutely.

Q In other words, a bargain price?

A Absolutely.

Q The market at that time was about 31-32, is that correct?

A 30, 31, 32, yes, sir.

Q And you were getting these shares at 28?

A That is correct.

Q Is it not a fact that,normally, selling a large block of stock like that would cause a price drop in the stock?

MR. FEFFER: Objection, your Honor. There is no testimony that it was sold.

MR. ROBSON: I believe I asked the witness whether they were not sold and he said yes, but I will clear that up.

THE COURT: I have a note that they were sold at Mr. Duboff's direction shortly thereafter to certain named

brokers. That was my recollection of the testimony as well, Mr. Robson.

MR. FEFFER: I will withdraw the objection.

MR. ROBSON: Just so the record is clear, I will ask the question.

Q Were those two 5,000-share blocks sold immediately thereafter, within a matter of a day or two?

A Yes, sir.

Q Is it not a fact that when there is only 100,000-odd shares available, when 10,000 shares are placed on the market that under normal circumstances that would have a tendency to cause the price to drop?

A Yes, sir.

Q As an experienced trader in the market, would you expect to push the price of a stock up by selling 10,000 shares?

A No, sir, you would not.

Q In fact, however, these shares were able to be sold at prices above the $28 price; is that correct?

A Yes, sir.

Q Would that indicate to you as an experienced trader that there was a substantial demand for this stock?

A Yes, sir.

Q Can you tell us the names of some of the brokerage

firms which purchased the 10,000 shares of stock?

A Yes, sir. 2,500 shares went to A. G. Becker & Company. 2,500 shares went to Dreyfoos, Ellis & Company. 1,900 shares went to Mayer & Schweitzer. Another 800 shares went to Dreyfoos, Ellis. Another 800 shares to A. G. Becker. 500 shares to Engler & Budd. And 400 shares to Cook & Company.

I believe that covers it.

THE COURT: That would total out to 10,000 shares?

THE WITNESS: I'm just going to add up now, your Honor.

(Pause.)

THE WITNESS: Let's see, we had 200 shares -- I'm sorry, 300 shares to Charter Securities.

THE COURT: You hadn't mentioned that before.

THE WITNESS: No, I'm sorry, I hadn't.

THE COURT: Why don't you start at the beginning and do a recap from the list that Mr. Robson has given you? We'll do it again.

THE WITNESS: All right.

THE COURT: Starting with the 2,500 shares.

THE WITNESS: 2,500 to A. G. Becker. 2,500, Dreyfoos, Ellis. 400 to Charter Securities.

THE COURT: What about Mayer & Schweitzer?

THE WITNESS: 1,900 to Mayer & Schweitzer. 800 to Dreyfoos, Ellis. Another 800 to A. G. Becker. 100 to H. Cook & Company. 500 to Engler Budd. And another 400 to H. Cook & Company.

THE COURT: I am a hundred shares short.

MR. WITNESS: There was a hundred shares two days later, your Honor.

THE COURT: To whom?

THE WITNESS: Vilas & Hickey.

THE COURT: That would then total out among those transactions to 10,000 shares?

THE WITNESS: Correct, sir.

THE COURT: Very well.

Q Of this 10,000-share block, approximately 1/3rd or 3,300 shares were sold to A. G. Becker, is that correct?

A That is correct.

Q A. G. Becker is one of the leading brokerage firms on Wall Street, is it not?

A Absolutely.

Q Did Mr. Duboff advise you that A. G. Becker was prepared to buy that stock at that price, or did you deal with A. G. Becker directly?

A No, sir. Mr. Duboff had put me into A. G. Becker.

Q Mr. Duboff told you that A. G. Becker would buy that?

A He put me into it, that's correct.

Q Did he tell you anything at all about how he knew that A. G. Becker wanted to buy it?

A No, sir.

Q Another 3,300 or another third was sold to Dreyfoos, Ellis; is that correct?

A Absolutely correct.

Q Was that a substantial brokerage firm on Wall Street?

A Yes, it is or was.

Q Also a reputable firm?

A Yes, sir, it was.

Q Of course, so was A. G. Becker, a firm of good reputation?

A Absolutely.

Q Did Mr. Duboff tell you that Dreyfoos, Ellis would purchase 3,300 shares?

A The same thing; that is correct, sir.

Q Are you stating that Mr. Duboff told you about all of these purchases?

A No, sir, I'm not.

Q Did you determine or locate the purchasers with

respect to any of them?

A Probably.

Q Which ones did you find?

A I guess Charter Securities.

THE COURT: Which took 400 shares?

THE WITNESS: Yes, sir.

THE COURT: Any others?

THE WITNESS: No, sir.

Q 1,900 shares or another twenty percent were taken by Mayer & Schweitzer; is that correct?

A Yes, sir.

Q Is that also a substantial, reputable brokerage firm?

A Absolutely.

Q So that approximately 85 percent of the stock, this 10,000 shares was taken by three major, reputable brokerage firms on Wall Street; is that correct?

A Absolutely.

Q I believe you testified that as a result of the trading which you did in Richard Packing stock at the direction or advice or with the advice of Mr. Duboff, you made profits of about $50,000 over a period of six or eight months; is that correct?

A That is correct.

Q How much of that $50,000 was represented by the profit on this one single transaction, the disposition of the 10,000 shares of stock in October?

MR. FEFFER: Objection to the form, your Honor.

THE COURT: Let's start out with the basic question, Mr. Robson.

Did you make a profit on the sale of the 10,000 shares which you have just been talking about?

THE WITNESS: Yes, sir, I did.

THE COURT: How much of a profit?

Q How much was that profit? Maybe that is the simplest way.

A I'd have to rough it out. I couldn't give you an exact figure.

Q Would you accept a figure of $45,600-some-odd dollars, if I told you that is what the profit was?

A That sounds round enough, that is correct.

Q Does that sound around correct?

A Yes, sir.

Q In other words, of the $50,000 in profits that you made in trading Richard Packing stock, $45,600 of it was made within two or three days in the early part of October; is that correct?

A That is correct, sir.

Q And it was made because you were able to obtain from Jaffee & Company, which was the firm from which Mr. Duboff and Mr. Deutsch worked, 10,000 shares at a bargain price; is that correct?

A Yes, sir.

Q That takes care of the month of October.

How many shares did you buy in the month of November?

A 100 shares.

Q Do you call that substantial activity?

A No, sir.

Q How many shares did you sell in the month of November?

A 30 shares.

Q Would you call that substantial activity?

A No, sir.

Q What about the month of December?

A 1,200 shares purchased.

Q How many were sold?

A I'm sorry.

By the way, in November there were none sold. I'm sorry. I was looking at the wrong column.

THE COURT: You said 30?

THE WITNESS: That is correct, sir. That was an

error, your Honor.

Q The activity was even less substantial?

A I'm afraid it was.

In the month of December we purchased 1,200 shares and sold 100 shares.

Q You purchased the 100 shares at what price?

A In November we purchased a hundred.

Q In December?

A In December we purchased 1,200 shares in December, and sold 100 shares.

Q You purchased 1,200 shares at the prices of 27 and 28; is that correct?

A That is correct.

Q And you sold 100 at 31, is that correct?

A That's correct.

Q The price of 27 and 28 that you paid in December was 2 or 3 or 4 points lower that the prices you were paying in November, is that correct, or the price that you paid in November?

A That is correct. About 2 to 3 points, correct.

Q Would you say that the purchase of 1,200 shares during the course of the month --

THE COURT: I'm sorry. I thought the witness said he bought at $28 in November. Or was that in October?

THE WITNESS: In October we purchased the 10,000 at $28.

THE COURT: And then in November when you bought a hundred shares --

THE WITNESS: We bought it at $30 a share.

THE COURT: And in December when you purchased 1,200 shares?

THE WITNESS: At 27 and 28.

THE COURT: Thank you.

Q Would you describe the purchase of 1,200 shares during the course of a month as substantial trading?

A No, sir.

Q Would the purchase of 1,200 shares have any substantial impact on the price of the stock on the market?

A Well, it might force me to go down on my bid.

Q Might force you to drop your bid?

A That is correct.

Q Certainly not to raise it?

A That is correct.

Q Starting at the beginning of January, and I don't have the sheet in front of me, so I have to do this by recollection, but starting at the beginning of January you were buying -- you bought a substantial number of shares

during the first, roughly, twenty-eight days of January, is that not correct?

A I would say so, without taking an actual total.

Q According to my reckoning, something like 3,300 shares during that twenty-eight-day period?

A No, not 300.

THE COURT: 3,300.

THE WITNESS: 3,300, I'm sorry.

(Pause.)

A About 3,000.

Q Most of those purchases were made, were they not, at decreasing prices during the month and at fairly low prices, as low as 21 and 22 dollars a share?

A That's correct.

Q And you sold during that period alos in excess of 3,000 shares, did you not?

A Shall I total it up?

Q Just see whether roughly that's correct. I don't think the exact number is important.

(Pause.)

A Yes, it was in excess of 3,000 shares.

Q I beg your pardon?

A I would say it is in excess of 3,000 shares.

Q Those were also sold at lower prices than prior months, were they not, in the low 20's mostly?

A Yes, sir.

Except towards the end of the month where it started going up.

Q There seems to be an increasing demand at the end of the month for a short period, is that correct?

A That's correct.

Q After the end of January, up to March 14th, which was when the first sale took effect of the underwriting of 10,000 shares, there were only 1,300-odd shares

purchased by Kelly, Andrews & Bradley, is that not correct?

A About 1,000 shares.

Q And those were purchased, were they not, at decreasing prices?

A In the month of February?

Q In the month of February and the beginning of March.

A No, sir, they were purchased at prices ranging from 35 to -- 35 is the high purchase and 30 was the low purchase.

THE COURT: That's up from the low 20's, was it, the previous month?

THE WITNES: Yes, sir.

THE COURT: ThAnk you.

Q By the end of January the price had been where?

A Well, I brought 300 shares -- in January I had paid 34 and 35.

THE COURT: You had?

THE WITNESS: Yes, sir, I had.

Q Then on February 4th you bought 100 shares at 35, is that right?

A Yes, sir.

Q That was from Wood, Walker?

A Yes, sir.

Q By February 25th the price had dropped down to 30, had it not?

A That's correct.

Q What about the month of March? What were the purchases during March?

A (No response.)

Q Do you need some help with that?

A I'm afraid so.

(Pause.)

Q Is it not true, Mr. Shwidock, that from February 25th until March 14th when you had the first transaction with respect to the underwriting, there were no purchases by Kelly, Andrews & Bradley of any stock of Richard Packing?

A That's correct, sir.

Q In other words, no attempt was being made during that two or three week period prior to the underwriting to support the market, was there?

MR. FEFFER: Can I have a date on that?

Q February 25th to March 14th.

MR. FEFFER: Excuse me?

Q From February 25th to March 14th.

MR. FEFFER: I object to the question, your

Honor.

THE COURT: Sustained.

Q During the period, the entire period from that one transaction in October when you acquired the 10,000 share block, from that date until the date of March 14th, the date of the underwriting, was there any transaction, any single transaction which in your opinion would constitute a large block? Either purchased or sold.

A Just one other sell side -- there are two other sell side, January 28th.

Q How much was that?

A A total of 1,850 shares.

Q That is the only transaction in six months that would constitute a large block, and that was a sale which would tend to depress the price, rather than a purchase, which would tend to raise it, is that right?

A No, I sold it to another broker.

Q You sold it to another broker?

A Right.

Q That is the only so-called block transaction in the entire six-month period, is it not?

A Yes, sir.

MR. FEFFER: Your Honor, again, I didn't get the date of that, I'm sorry.

THE COURT: January 28th I understand there were total sales of 1,850 shares?

THE WITNESS: That's correct, sir.

THE COURT: Was that to one brokerage firm?

THE WITNESS: Yes, sir.

THE COURT: You have it, Mr. Feffer? January 28, 1969?

MR. FEFFER: Yes, your Honor.

Q There's been some testimony about the activity in the trading of the accounts of William Harris and Harry Morginstin.

A Yes, sir.

Q Go through that record and tell me how much shares of Richard Packing were purchased and how many shares of Richard Packing were sold by either of those two gentlemen, and when.

A I need your assistance on this one.

(Pause.)

THE COURT: Can you answer Mr. Robson's question by referring to defendant Deutsch's Exhibit B, for identification?

THE WITNESS: I may be able, yes. On January 14th William Harris traded 300 shares. I guess I better look at that P&S blotter. I don't understand this entry

at all.

THE COURT: You said traded. At the moment you can't tell us whether he bought or sold and therefore you want to look at the P&S blotter for January 14, 1969?

THE WITNESS: Yes, sir.

THE COURT: Very well. You may do that. Mr. Robson has now handed it to you.

Q January 15th too, you better look at .

(Pause.)

A On January 14th Kely, Andrews & Bradley bought 300 shares of Richard Packing from William Harris for $22 a share. That's on the 14th of January.

Q That's almost the lowest price at which it stayed during the entire six-month period, is it not?

A Let's see --

Q I believe if you will look at the record you will find that 21 was the lowest price.

A You're probably right.

THE COURT: And this was 22?

THE WITNESS: Yes, sir. We bought it from Mr. Harris, trading bought it at $22 a share.

THE COURT: Very well.

A On January 15, 1969 William Harris sold 300 shares of Richard Packing through Kelly, Andrews through

Loeb, Rhoades, account of Jaffee, at $25, and Harry Morginstin did the same exact trade, 300 shares at 25, Loeb, Rhoades, account of Jaffee.

THE COURT: At what price?

THE WITNESS: 25.

Q Looking at that exhibit, which is Exhibit B, those were the only transactions made by either Mr. Morginstin or Mr. Harris during that entire six-month period, is it not, in Richard Packing stock?

A Up to--

Q Up to the date of the underwriting.

A Yes, sir. That's absolutely correct.

Q Let's get to the underwriting. If I understand correctly, your arrangement with Mr. Cohen was that you would bill out the stock, that purchasers would be provided to you, and that you would remit to him $28 a share and you were to receive something as compensation for handling the billing, etc., is that correct?

A Yes, sir, that's correct.

Q Is it not a fact that your compensation was derived by taking on one-half point to the trade to Jaffee and one-quarter point to the trade to Mr. Morginstin or Mr. Harris?

A Plus the sale of 500 shares to A.J. Butler & Co.

and apparently he read it wrong. I don't imply he did anything improper. I am trying to correct the testimony. He read something inaccurately by accident and I am trying to get it corrected for the record.

THE COURT: Have you had a chance during the recess to look further at the P&S blotter relative to those 300 shares, 300 share lots, and could you tell the jury, since you have looked during the recess at the blotter, what the facts are?

THE WITNESS: Yes, sir.

On January 14th the Kelly, Andrews & Bradley trading account sold 300 shares of Richard Packing at 22, the William Harris account.

Q Let me direct your attention for a moment to the 5,000 shares of Richard Packing stock which were sold to Jaffee & Company as part of the 10,000 share underwriting. Number one, you stated that Mr. Duboff told you to sell those shares to Jaffee & Company after you had had a conversation with him, is that correct?

A That's correct.

Q Can you tell us when that conversation with Mr. Duboff occurred?

A It would be the same day of the trade.

Q Same day of the trade?

THE COURT: I suggest no speeches from any counsel. The jury will disregard the last remark of counsel

Mr. Robson?

MR. ROBSON: I object on the ground of relevance.

THE COURT: You raised it? You showed this to the witness and inquired on this?

MR. ROBSON: Yes, sir.

THE COURT: You wish to make an objection on the ground that it is irrelevant?

MR. ROBSON: Yes, sir, because I believed when the witness was questioned about this matter, in the first place, and in order to preserve the record, I am continuing the objection.

MR. SEGAL: Same objection, your Honor.

THE COURT: Overruled.

It will be received as subject to connection insofar as it relates to the Messrs. Cohen and Deute-

(Government's Exhibit 42 for identifi- received in evidence.)

MR. ROBSON: If your Honor please, I also ask it be taken subject to connection as to the defendant Duboff in that it must be tied in some way, I submit, to

A On January 20th I sell 300 shares at 26 to Loeb, Rhoades, account of Jaffee.

On January 21st, I sell 200 shares at 26 to Loeb, Rhoades, account of Jaffee.

January 22nd, I sell 100 shares to Loeb, Rhoades, account of Jaffee.

MR. ROBSON: At what price was that?

THE WITNESS: I'm sorry: 26.

A On January 23rd, I sell 450 shares to Loeb, Rhoades, account of Jaffee, at 27.

THE COURT: 450?

THE WITNESS: Yes, sir.

A On February 12th, I buy 300 shares at 32 from Loeb, Rhoades, account of Jaffee.

On April 1st I sell 200 shares at 32 to Loeb, Rhoades, account of Jaffee.

On October 8, 1969, I buy 100 shares, Loeb, Rhoades, account of Jaffee.

THE COURT: At what price?

THE WITNESS: I'm sorry: 40.

Q Does that trading represent the substantial portion or a large portion of the trading you did in Richard Packing?

MR. SEGAL: Objection, your Honor. He can be asked what portion of the trading that is --

MR. ROBSON: Your Honor, I object to the leading. The question should be "What were the circumstances surrounding the sale" or "How did the sale come about".

MR. FEFFER: Fine.

MR. ROBSON: Mr. Feffer says fine, but then he continues --

THE COURT: He will withdraw the last question and ask another one.

Q Tell the Court and jury the conversation that you had with respect to each of these 5,000 share purchases by Kelly, Andrews & Bradley?

MR. ROBSON: There was not even any testimony that there was any conversation.

MR. FEFFER: On cross examination there was, your Honor.

THE COURT: Let me just go back:

As I understand your testimony now, on October 4, 1968, Kelly, Andrews bought 5,000 shares of Richard Packing Company stock, is that correct?

THE WITNESS: That's correct.

THE COURT: On the 7th of October, 1968, Kelly, Andrews & Bradley bought an additional 5,000 shares of Richard Packing Company stock, is that correct?

THE WITNESS: That's correct, sir.

THE COURT: Would you tell me and tell the jury, as well, the circumstances under which those purchases were made, just what happened?

THE WITNESS: Well, I had received a call from Mr. Duboff telling me that I was buying 5,000 shares of Richard Packing at 28 from Jaffee& Company and selling, in the first instance, 2,500 each to A.G. Becker and Dreyfoos, Ellis.

Q Do I understand you correctly:

You purchased 5,000 shares at 28 and turned around on the same day and resold them for 33?

A Yes, sir.

Q What was the profit, if you can recollect, on that transaction?

A Well, it's five points on 5,000 shares; $25,000.

Q What did you do with the profit on that one transaction?

A Well, the profit went into our trading account and I calculated, as we did, one-third of the profit be set aside for Mr. Deutsch and Mr. Duboff.

Q Let's go to the second 5,000 shares. What was the price you purchased those at?

A 28.

Q Was that below the market price?

A Yes, sir.

Q What was the sale price by you for those shares, approximately?

A Well, prices ranging from 31 and 3/4 to as high as 35.

Q Again, can you tell the Court and jury approximately what the profit to Kelly, Andrews & Bradley was on thos transactions?

A I would have to calculate it, but I would say approximately just about the same amount.

Q What did you do with the profit with respect to those transactions?

A The same exact thing I did before.

Q Will you look at the month of January. Were certain purchases made by Morginstin and Harris at that time?

A Yes, sir.

Q At what price were these purchases made?

A I sold 300 shares on the 13th at 22¼ to Morginstin, and on the 14th, 300 at 22 to Harris.

Q What happened to the price of Richard Packing stock after those purchases by Morginstin and Harris?

MR. SEGAL: Objection, your Honor.

THE COURT: Sustained.

Just rephrase your question.

Q What, if anything, happened to the price of Richard Packing stock after January 1st of 1969?

MR. SEGAL: OBjection.

THE COURT: Did anything happen?

(Continued on next page.)

Q All right.

Did anything happen, in terms of the price?

A Yes. The price started to move up.

Q On cross-examination you referred to or were asked questions about a billing agent; is that correct?

A In reference to what?

Oh, yes, yes.

Q Will you define for the Court and jury what your definition is of "billing agent"?

A Well, a billing agent is usually anybody who acts as an agent on behalf of somebody else. It could be a customer, a broker; could be anybody.

Q I want to refer directly, with that in mind, to what you did with respect to the 10,000 shares on the Regulation A offering.

Can you break down exactly for the Court and jury what happened to the 10,000 shares that you received?

A Yes, sir.

1,000 shares I took into -- the first thousand I took in on March 14th into my trading account, to cover a short.

Q Did Kelly, Andrews & Bradley make a profit in covering the short?

A Yes, sir.

William Rosenthal, and Kelly, Andrews, named herein as co-conspirators but not as defendants, and others to the grand jury known and unknown, unlawfully, wilfully and knowingly did combine, conspire, confederate and agree together and with each other to violate certain sections of the Federal Securities Laws?

A Yes, sir, that's correct.

MR. BLOCK: If your Honor please, I think an instruction to the jury would be appropriate, to wit, if I may state it now, that an indictment is only a charge, as your Honor has said before, and it is relevant here only to the extent that this witness has admitted his guilt.

THE COURT: Yes, I so state to the jury.

MR. BLOCK: Thank you.

THE COURT: You may proceed, Mr. Feffer.

(Government's Exhibit No. 43 was marked for identification.)

Q I would like to have you look at Government's Exhibit 43 for identification and identify it, if you can.

A Yes, sir.

Q What is that?

A This is a photostatic copy of a prospectus on Status Marketing Corporation underwritten by Kelly, Andrews &

Bradley.

Q Is this prospectus of the subject matter of the indictment with which you are charged?

MR. ROBSON: I object. Counsel was allowed to read from a document, but Mr. Segal read from it.

I don't believe that that entitles counsel to go into a completely unrelated area of redirect examination, an area that has nothing whatsoever to do with this case. The only fact that was elicited on the cross-examination was the fact that there was a plea of guilty to the indictment and the nature of the charge.

That's all that was gone into.

THE COURT: Overruled.

Q Is this the prospectus that is the subject matter of the indictment that you were charged with?

A Yes, sir, it is.

Q What type of company is Status Marketing?

MR. SEGAL: I am going to object to theentire line on Status. The indictment was read for a very specific purpose and a recognized one, and doesn't open up any doors.

THE COURT: Overruled.

Q What type of company is Status Marketing?

A I believe they were in the public relations

regarding franchising businesses.

Q Do you know who were some of the shareholders of Status Marketing Corporation?

MR. BLOCK: I object to this, if your Honor please, and I am going to earnestly request a side bar.

THE COURT: Step to the side bar.

(At the side bar.)

MR. BLOCK: Judge, I don't know where this is going but we are confronted with a specific indictment here. It so happens that Richard Packing Company was a shareholder in Status Marketing Company. But there is no charge in the indictment that there was anything wrong with that.

Now we are going into Status Marketing. There is no charge in the indictment that there was anything wrong with Status Marketing. So I think that if the United States Attorney is going to pursue this thing, that raises a host of questions which have no relevance to this case and make it strongly prejudicial.

MR. FEFFER: I am going to demonstrate for the jury and the Court the reason why Mr. Shwidock telephoned Mr. Deutsch on May 12th or May 14th of 1974 after he was indicted with respect to Status Marketing. I am going to go into the nature of the conversation, why he called him, the

reason for the telephone call, and it's going to stem from the fact that this particular offering was given to Kelly, Andrews & Bradley by Mr. Deutsch and Mr. Duboff and the logic that flows therefrom.

THE COURT: When was this telephone conversation?

MR. FEFFER: The one that Mr. Segal brought up. I think it was four or five days after the indictment was brought up. I think it's May 14, 1973.

THE COURT: 1973?

MR. FEFFER: Yes, this was a conversation that was gone into in detail on cross-examination. I am going to now attempt to show why Mr. Shwidock made that telephone call to Mr. Deutsch. And I think I am clearly entitled to that.

THE COURT: Let me make an assumption for the moment.

Assume again that this would be admissible against Mr. Deutsch. Assume that. Let's assume that the subject is an admission against interest. How does it affect Mr. Cohen? Remember, it's after the expiration of the conspiracy.

MR. FEFFER: It also goes, your Honor, the telephone call is the only connection I am going to bring up with respect to Mr. Deutsch.

With respect to the other defendants, that was

an underwriting. Kelly, Andrews & Bradley was on the cover, and the date of that underwriting was September of 1969, and that underwriting was given to Kelly, Andrews & Bradley by Deutsch and Duboff.

I am going to elicit from this witness that although the name Kelly, Andrews & Bradley was on the front page of that prospectus that, in fact, he did nothing different in that underwriting of Status Marketing than he did in March in distributing the shares of Richard Packing Company --

THE COURT: A similar act?

MR. FEFFER: Exactly right.

THE COURT: All right.

1B pm.

MR. BLOCK: Your Honor, I never heard of such a thing.

MR. ORENSTEIN: I submit, your Honor, that that is improper cross examination at this time. There is nothing on direct or cross examination of this witness that would elicit that type of questioning and that type of responsive answers.

MR. BLOCK: It is a similar act we talk about on the part of a defendant not on the part of a witness.

MR. SEGAL: This is the very kind of thing that the government by splitting up cases and opposing consolidation is now attempting to cash in on.

MR. FEFFER: Status Marketing is not a subject of an indictment, your Honor.

MR. SEGAL: What we have here is that you have got a subsequent statement in which we have examined this witness about impeaching his credibility and showing his motive and showing his propensity in this area to cooperate with the government because of what he is looking to as a possible break in the future. I went into a legitimate area of cross examination. By going into that legitimate area it was confined to the acts that he did in connection with another indictment.

THE COURT: You opened the door, Mr. Segal.

You are hoist on your own petard at this moment.

MR. SEGAL: I don't know that I am hoist on my own petard at all. I have a perfect right to defend my client.

THE COURT: You have a perfect right to go in, but you cannot stand here and say that he cannot examine on the same subject.

MR. SEGAL: To allow something so highly prejudicial and extraneous to these issues, it is going to obscure the issues in this case. If we can't examine a man on its criminal record because of the fact that we are liable to be opening up the door on this area, when the cross examination was very carefully confined --

THE COURT: It was not so carefully confined, sir. I have two volumes of your cross examination. It was so carefully confined that you didn't know fifteen minutes ago what he was reading from.

MR. SEGAL: Because I misheard a date, your Honor. That is an unfair statement.

THE COURT: I heard you. You got up there and you made a point that was improper and you know it.

MR. FEFFER: Mr. Block asked a series of questions about are you an underwriter, were you a billing agent, and I am going to demonstrate that what he did with

respect to Status Marketing was no different from what he did in March of 1969.

MR. SEGAL: Your Honor, these are subsequent acts that are being used to throw light on issues of this case.

THE COURT: The Status Marketing underwriting as I have just heard it took place during the period of the alleged conspiracy. Am I right or am I wrong?

MR. SEGAL: That's correct.

THE COURT: All right. I am going to permit it as a similar act. I am troubled about this telephone conversation with Deutsch.

MR. FEFFER: We will take limiting instructions on that, your Honor. No question about it. I think, your Honor, that it is essential. He has brought up a telephone conversation that was taped inwhich Mr. Shwidock made some very damaging allegations against the United States government. The effect of those documents that we have there were manufactured at a later stage. I think we have a perfect right to show every circumstance surrounding that conversation and as to why Mr. Shwidock made that telephone call, if he did to begin with, and why he was talking with Mr. Deutsch. It becomes totally relevant to show the motive and attempt which Mr. Segal just referred to.

MR. SEGAL: Your Honor, I don't see how this shows anything about motive and intent about why that phone call was made. This telephone call questions for itself. This telephone call doesn't say one word about the reason or the background of Status.

THE COURT: Oh, now, gentlemen, you're talking before Mr. Robson, for example, made an inquiry and I permitted it, about a conversation that he had had with his own lawyer to demonstrate his intentions and his state of mind. I gave limiting instructions but I permitted that. It seems to me that you were afforded, if I may say so, the broadest possible latitude on cross examination, and if I may say it again, you took advantage of it, which was appropriate.

I don't quarrel with you for that. But now you're attempting when the shoe is put on the other foot to limit the government. I would suggest the Status Marketing inquiry is proper as proof of a similar act. And I am seriously considering permitting the government to inquire to get the background of this conversation that you did make a great deal about, gentlemen. I mean, this was something that was made a central part of the cross examination of at least two of the defense counsel, and under the circumstances, I think you have some latitude here o

the redirect which I would not have had on direct examination, and I am going to permit the government to inquire relative to Status Marketing.

MR. SEGAL: Your Honor, isn't it germane that here we are being asked to sit and listen to an examination of Status Marketing as a similar act when the government has brought an indictment that did not charge in that indictment, that did not charge these people or any of the defendants on trial, with nothing at all in that indictment about Mr. Deutsch. It was a purely one-sided situation with regard to Status that had nothing to do with any of these people as co-conspirators.

THE COURT: I think you overlooked something.

MR. FEFFER: They went into considerable detail on this fellow Schrem, on Weiss, being someone involved with other matters outside of the Status Marketing indictment.

Also, your Honor, I think most important we want to be able to establish that the reason why Shwidock was saying many of these things to Deutsch is becuase he was talking to someone who he knew was involved, and we want to show that the first thing he did, practically, after he was indicted, was to make a telephone call to Bernard Deutsch.

MR. SEGAL: Your Honor, I'm going to ask the government to make an offer of proof. This is the government's conclusion.

MR. FEFFER: I can't make an offer of proof. I haven't spoken to him. I have been prohibited from speaking to him.

MR. SEGAL: The government couldn't have, and couldn't have after they have spoken to him, an offer of proof. This indictment is going into so many byways that this jury just on the basis of weight and not on the basis of evidence and on the basis of confusion is liable to reach a conclusion.

We are entitled under the law to impeach that man's credibility.

THE COURT: I didn't say you weren't and I have permitted you to do it.

MR. SEGAL: Because your Honor, in the course of the impeachment if we are going to get into all these other areas which I have nothing to do with this case and which the government cannot even represent to the Court that's going to reach a conclusion from this man, then I think we are in an unfair area.

MR. ROBSON: The testimony that was gone into on cross was solely for the purpose of establishing that

this witness was subject to penalty or sanctions by this Court and therefore had a motive to lie.

THE COURT: But then why was it necessary to stand up there and read page after page from sections of an indictment or an information?

MR. ROBSON: It wasn't page after page. What was read were the basic charges so the jury could know what he was facing in terms of sentence, the kind of crime he was charged with.

THE COURT: Mr. Robson --

MR. ROBSON: For purposes of redirect the only issue is this witness' motivation is not any less because some of the other defendants may or may not have had some relationship with that charge. He is still facing a sentence when he was involved alone or whether fourteen other people were involved.

The main thing is whether he told the truth on the stand or whether he lied in order to save his skin. That's the only issue raised. Likewise, with respect to the telephone conversation, I do concede that the government has a right to attempt to establish that there was no motive for his making those statements and I have a right to ask about those statements and whey he said them and whether he meant them and whatever. But that doesn't

entitle them to go into the reasons forthe call the to the extent that they have nothing to do with this case or with his motivation.

THE COURT: I understood the government was going into matters in order to establish his motivation for making the call, which I too think is proper. Let me go on with one other thing --

MR. ROBSON: What I was going to say, if it is the government's position that he was calling because he was subject to an indictment and he wanted to discuss something with Deutsch, perhaps because he felt that Deutsch was somehow involved with him, I can concede that they have a right to explore that. But they have no right to go into this whole Status Marketing situation at this point.

They can ask the witness about the conversation and specifically those portions of the conversation that were referred to. We referred only very carefully to those portions that have to do with this case.

THE COURT: I think they can and I cite as support for that, the means portion of the information, and specifically; paragraph 11G --

MR. ROBSON: We are not talking about the information now.

THE COURT: I am talking about the information.

MR. ROBSON: That is not what is under --

THE COURT: If you will give me a moment, I will get to it. 11G which charges among other things that there was a failure in connection with the March 11, 1969 offering circular for 10,000 shares of Richard Packing Company stock, there was a failure to disclose two, that the defendants Bernard Deutsch and Stanley Duboff and the co-conspirators, Kelly, Andrews and Bernard Shwidock, were underwriters for said offering and were receiving compensation therefore.

The way I define the proof in connection with the Status Marketing transaction is to show that that was handled similarly and to establish that this allegation that the defendants did make a false representation or omission in their offering circular relative to whether or not they were underwriters, is buttressed by another offering circular, which would constitute, in my judgment, a similar act which would relate to the aspect of intent, motive, absence of mistake.

That is the way I see it. If this was not in the means paragraph of the information I might see it definitely. Let me hear from the government on that.

MR. ROBSON: I just want to say one thing. I understand that theory, but on what basis is that proper

redirect?

THE COURT: But it was gone into on cross examination. The Status Marketing indictment, as I heard it, or information was referred to in numerous questions on cross examination.

MR. FEFFER: It will also show, your Honor, aside from the evidence of similar act, it will also show why Mr. Shwidock was saying some of the things he did to Mr. Deutsch about the government in that conversation. Obviously after someone is indicted and is saying that he is -- his state of mind is far different. And what he was saying to Mr. Deutsch has to be looked at in that regard.

MR. SEGAL: Your Honor, this indictment is an indictment that does not talk about anything about an underwriting of Status, your Honor.

THE COURT: It's the information --

MR. SEGAL: I'm talking about the May 9, 1973 indictment.

THE COURT: I understand that. But you opened the door as far as I am concerned to anything relating to that case that is relevant to this information.

MR. SEGAL: But, your Honor, there is nothing in this May 9, 1973 case which accuses them of not saying they were underwriters, and to why this is a similar act,

to demonstrate that in this case --

MR. FEFFER: I am not using the indictment. I am using the prospectus.

MR. SEGAL: For thatpurpose? What is the government saying?

MR. ROBSON: The question was that that prospectus is a basis for the indictment leaving the implication that there was a charge in this indictment similar to the charge we have here, and there is no such charge.

MR. FEFFER: Where Kelly, Andrews & Bradley appeared on the prospectus as an underwriter, that that was a true underwriting, and that the market offering, although his name did not appear, he was an underwriter there too.

MR. SEGAL: Your Honor, I hold the government to that --

THE COURT: I have not seen the offering circular, and I thought it was similar that they were not named an underwriter.

MR. FEFFER: That is the whole point. The point is that on the Status their names appear as underwriters.

THE COURT: I thought on Status they were in the same position as here.

MR. SCHATTEN: They were.

MR. FEFFER: They were named on the cover of the Status prospectus as an underwriter. Mr. Block has asked questions, "Were you an underwriter with respect to the March 19th offering?". Mr. Shwidock gave him the answer "No." I'm going to show that the reason Mr. Shwidock said no is simply because his name did not appear on the cover.

MR. BLOCK: He is impeaching his own witness too.

THE COURT: He can do that. But I am concerned with what you told me.

MR. FEFFER: That's the whole reason for it, your Honor, because he is say ing that he did both underwritings in the same method although one he put his name on the cover and the other he didn't.

THE COURT: I thought they were similar because he did the same thing and had his name not as an underwriter.

MR. FEFFER: Your Honor, it seems to the government we should be allowed to elicit proof to show that the March 19th offering even though Kell, Andrews & Bradley was not named per se as an underwriter, that in fact they were underwriting and that they performed the same exact function and pursuant to the same exact directions as in Status, but he wasn't named an underwriter. That goes to the very heart of this case. If he says he was an underwriter, in September, and the only reason for that is because his name appeared on the indictment --

THE COURT: On the offering circular?

MR. FEFFER: Yes, or the prospectus. That refutes Mr. Block's line of questioning on cross examination.

MR. SEGAL: The 3500 material indicated that he did not consider himself an underwriter and he considers himself only a billing agent and what Mr. Block went into was merely a reiteration of that affirmative fact, from the 3500 material.

Now, what is the government saying? When he said he was an underwriter he was only thinking of whether his name was on the offering circular.

MR. ORENSTEIN: The fact of the matter is, in the Status Marketing underwriting Kell y, Andrews & Bradley

received its normal underwriting commissions, which were set forth in the prospectus. In the Richard Packing underwriting they merely received commissions for billing it out. Mr. Feffer full well knows that there are prescribed commissions set forth by the NSDA on those commissions and fees were received in the Status Marketing underwriting but not in the Richard Packing underwriting.

There is no same set of facts as applies to both situations. They are quite different.

THE COURT: I don't want to get into trying to impeach the witness by proof of a collateral matter moreas. That is the thing that bothers me now.

MR. FEFFER: I limit it to this, your Honor:

Simply that the underwriting of the Status Marketing was brought to Mr. Shwidock from Mr. Deutsch and Mr. Duboff. I won't go into the mechanics of the offerings -- and to show Morginstin and Harris received a substantial number of shares in that offering. I think I can go right to the telephone call to show Deutsch and Duboff had an interest in that underwriting and that explains why this man telephoned Deutsch.

THE COURT: That latter aspect is proper, if you avoid getting involved with the mechanics of the Status Marketing offer.

MR. ORENSTEIN: And any comparison, your Honor. Because there is no comparison --

THE COURT: I fear we would then be entertaining proof of what could be fairly said to be collateral material and it does take usoff the track and put us into what I consider a morass.

Under the circumstances, if you limit your questions as you have just indicated, I will permit the inquiry, as limited.

MR. BLOCK: If your Honor please, will your Honor tell the jury that that is admitted subject to connection as far as Cohen is concerned?

THE COURT: That I will do.

(In open court.)

BY MR. FEFFER:

Q Mr. Shwidock, can you tell the Court and jury how you became the underwriter for the Status Marketing offer?

A Yes, sir. The deal was brought to me by Bernie Deutsch and Stanley Duboff.

THE COURT: The testimony just given is offered subject to connection as to Mr. Cohen, and the testimony which will follow in this area, likewise.

The Status Marketing deal was brought to you by

MR. FEFFER: May I be heard as to the reason for this question, your Honor?

THE COURT: Just one moment. Don't answer the question for the moment, Mr. Shwidock.

(Pause.)

THE COURT: Overruled.

A The question was?

Q Whether that refreshes your recollection as to the amount of profit that Kelly, Andrews & Bradley made in connection with the sale and purchase of Status Marketing.

A Well, this is --

Q Yes or no, very simply. Does it refresh your recollection?

A Partially, yes.

Q Are you able to say, after looking at this document, what the approximate amount of profit was made by Kelly, Andrews & Bradley?

A Oh, I will have to take another look at that. I wasn't prepared for that.

(Document handed to the witness.)

(Pause.)

A Yes, sir.

Q And what is that?

A Just the offering or offering and after market?

Q Offering and after market.

A Approximately $100,000.

Q What was done with the profit you made and Status Marketing?

MR. ROBSON: Your Honor, I object to this question, and I think your Honor knows the reason why.

THE COURT: Yes, you have indicated that an I find a different basis than you do for this question --

MR. SEGAL: Your Honor, I object to this question, too.

THE COURT: Overruled.

A 30% of the profits were given back to Deutsch and Duboff.

THE COURT: That is received subject to connection insofar as it relates to Mr. Cohen.

MR. SEGAL: Your Honor, at this point I would respectfully move with regard to a course of action that I would prefer a side bar conference on.

THE COURT: I am fully aware of what your motion would be and, under the circumstances, unless you wish to give an instruction to the jury, where I would hear you at the side bar, I am prepared to rule on your application.

were about to be indicted?

A Yes, sir, I was.

Q Were you likewise informed prior to the indictment in October by the United States Attorney's Office that you were about to be indicted?

MR. ROBSON: If your Honor please, I don't understand why it is that the objections are not understood by counsel.

THE COURT: Try not to lead. That is Mr. Robson's point.

MR. FEFFER: This is an area that I must lead in, your Honor.

MR. ROBSON: There is no such thing as "must lead," your Honor.

He has no right to lead.

THE COURT: Try first to ask a non-leading question. If I divine that the witness is having difficulty following you, I will permit you to change the form of your questions.

I recognize full well that you have not discussed matters with this witness --

MR. FEFFER: That is correct.

THE COURT: -- since he went on the stand, and the jury realizes that as well. At the same time, I will

require you, in the first instance, to develop your inquiry. If the witness doesn't understand your question or the answer is not complete, I am going to give you latitude, as I told you I would.

Q What was said to you, if anything, with respect to cooperation prior to the time that both indictments came down by the United States Attorney's Office?

A I don't understand that question at all.

THE COURT: Now you may ask him.

Q Isn't it a fact that before both indictments came down --

MR. SEGAL: Objection, your Honor.

Q -- you were given the opportunity to cooperate with the United States Attorney's Office?

A Yes, that is true.

Q And you chose not to do so, isn't that correct?

A That is correct.

Q And you were guilty with respect to both indictments, isn't that correct?

MR. ROBSON: If your Honor please, I really believe your Honor should be instructing the Government to discontinue this practice. Question after question, there has not been one single question asked on this redirect examination that is not leading. I am objecting

*****

Q In figuring the compensation for being a billing agent, you are not taking into account the profit that you made on the 500 shares, isn't that correct?

A No, sir.

Q Is it correct or not correct?

A No --

Q In other words, you are not taking that into account in figuring your compensation? That was a profit on a transaction, wasn't it?

A That's correct.

MR. BLOCK: I have no further questions.

MR. SEGAL: May I come to the bench for a moment, please?

THE COURT: Yes.

(At the side bar.)

MR. SEGAL: Off the record.

(Discussion off the record.)

MR. SEGAL: Your Honor, I merely wanted to make my record. I have the way I have blocked out my examination of this witness and I recall that in the preparation of that cross, I specifically stayed away from Status because I felt that it could pour over on us, and as I go through the transcript, and I am doing this at a time when I am trying to listen to the redirect, but as far

13 rmmch Shwidock-recross

as I can see, beginning on, I believe 1147 and 1148, when I posed the questions on this indictment, which was returned on May 8th -- filed on May 9, 1973 -- I don't believe, and at least I don't see it in 1148, and the pages succeeding after that -- I don't believe I mentioned the name of Status at all.

I know that I didn't want to do that because I had intentionally blocked it out because of its overtone.

That is just one point that I wanted on the record.

Secondly, your Honor, I went into that indictment --

THE COURT: The point I made before was that once you read part of you, you may want to block it out, but I feel that in fairness the other side is entitled to quote from other parts of it.

I will accept what you said, for the moment, that you didn't specifically mention Status Marketing.

MR. SEGAL: Our disagreement is even if in terms of completeness they would be entitled to read the rest of it -- my disagreement with what has occurred is then going into the substantive things behind the subject of the indictment.

At any rate, when I crossed all this, and I feel

my cross was a legitimate extension of this factor, and that is that the Government itself, in terms of its approach to these things -- I am trying to pull the onus from the fact of other indictments, and the Government itself proposes on redirect, "Were you indicted," et cetera, et cetera, and faced with that possibility, I have either an alternative of ignoring it or reiterating what the Government says, or developing it as I did, and developing it in a way which is merely consonant with the area opened on direct.

If I go into an area I am obligated to go into, and I circumscribe the area once I go into it, then I don't feel I have opened the door on exposing the substantive areas behind the indictment.

Your Honor, for the reasons I have given, the objections made, and the introduction of the material on Status, I would respectfully move for a mistrial at this point.

I feel that we have gotten into some extraneous areas which in part the Government, from the record, at least, and whether the Court will allow it is another matter -- I urge the Court not allow it, but from the record at this point they may be able to argue into it that other $85,000 we have kicking around in this case, and the Court

has been very explicit and circumspect in limiting, so that we are suddenly not faced with monies in our pocket beyond what is charged in the indictment.

5/6/74
PM 3a

MR. SEGAL: I cannot reiterate any more, your Honor, except I respectfully ask for a mistrial.

MR. BLOCK: If your Honor please, I do not join in the motion for a mistrial, but I move on Cohen's behalf for a severance. I renew my motion for severance.

MR. ROBSON: I'd like to join in Mr. Segal's motion. I would like to add just this one point:

There has been a lot of discussion about the right of one to read from a document when the other side has read from the same document. The rule, as I understand it, is that where one party reads from a document the other side may read any other portion of that document necessary to complete the portion which was first read, in order to be understandable or placed into context.

It doesn't automatically open the door. If this witness, for example, were cross-examined on grand jury testimony that went into forty different matters --

THE COURT: I couldn't agree with you more, Mr. Robson. But when you particularly select portions of the charge, it strikes me that this is not what happened in the case that you are using or would happen in the case that you used in the example.

The only point I will make to you is that when counsel chose to read as he did, on Pages 1148 and there-

abouts, he, in my judgment, and I can be wrong,too, but he opened the door to the type of examination that he got when the Government stood up on redirect examination.

I recognize your point and there is nothing automatic about anything. If I am talking about apples, I should really limit the reading to the portion of a transcript that relates to apples and not permit reading anything relating to oranges. I don't think that that happened here. I think that it was apples by Mr. Segal and the pits and the core of the apple by the Government. So it was the same fruit. That is the point I make.

I recognize your point and I recognize, too, that you join in Mr. Segal's motion.

MR. SEGAL: Your Honor, I would just say further here that as Mr. Robson indicated, aside from the specific name of the stock, there was nothing in here, I believe, in my own reading, which unfairly characterized the indictment. If the Government wanted to complete the name of the stock and wanted to read the Status Marketing thing in, I would have objected, but I don't think that I could have been as excited about the objection as I am at this point.

THE COURT: Let me suggest this --

MR. SEGAL: Your Honor, I don't want error in the

case and I don't want to the Court to have error in the case. What I am suggesting is perhaps a solution here. I move for a mistrial advisedly. I move for it because I have got to protect my record, but I don't want mistrials and I don't want error. I'm not playing for the Court of Appeals.

What I think could possibly happen here is that if the Government's examination could be -- the jury could be cautioned with regard to the Government's examination, that in its examination the only specific items that they are to consider is what the witness did with Status Marketing and to eliminate, to expunge from the record -- maybe we can do it once we get it -- the amount of money that was made, any similarities to this situation, that sort of thing.

I would urge the Court to consider that course of action. Perhaps when we have all of the transcript specifically in front of us, it might be easier to visualize, but at least we can reserve that for the future.

MR. FEFFER: Your Honor, I think Mr. Segal is missing the most compelling reason as to why this was gone into. Now that we have the full conversation or testimony of Mr. Shwidock, he testifies that he spoke with Mr. Deutsch on one or two occasions over a three-year period.

Suddenly, after he is indicted in Status Marketing, he either makes a telephone call or receives a telephone call from Mr. Deutsch. Obviously what he says during the course of that telephone conversation, as elicited by Mr. Segal, was extremely damaging in terms of admissions by Mr. Shwidock as to the Government's propriety in the handling of this case, and also to the merits of the case resulting therefrom. I think very strongly that we are able to go into precisely why this man, Mr. Shwidock, telephoned Mr. Deutsch to show the state of his mind when he spoke to Mr. Deutsch, and the only way that we can show the state of his mind and why he called Mr. Deutsch is to show that Mr. Deutsch had an interest in Status Marketing, in the way in which that matter was handled.

I think it's very relevant to go to his motive and his intent, and also to understand what he was saying. In other words, when he makes assertions against the Government, when he is talking to somebody who he feels is a co conspirator, he obviously is going to be speaking in a different light than to his wife, before whom he might be confessing.

THE COURT: I am prepared to rule on the motion made by Mr. Segal and joined in by Mr. Robson; that motion is denied.

prepared to rule on the motion for severance made by Mr. Block. That motion is denied.

MR. ROBSON: Your Honor, may I, on the record, make another application? And to set forth my reasons for it, to this testimony which merely exacerbates the situation, this motion is to strike all the testimony of this witness relating to the checks to the Reiss Bank. Your Honor, let me tell you what I am confronted with right now in terms of discrediting this witness' testimony. There is now testimony indicating that the witness received $90,000. The testimony indicates that the $90,000 was thirty percent of all profits made.

The implication to the jury is that there is some other hanky-panky dealings. Now we have heard some details with respect to one, that is, that there was some sharing of the underwriting compensation. Whether the jury will be sophisticated enough to understand completely how this is involved, we can't say, but certainly it's there before them.

The problem I am confronted with at this time, I have a record which confronts me. The witness has testified that he paid thirty percent of the profits he made on Richard Packing. The fact of the matter is --

THE COURT: And that he made $50,000 in profit, a-

I remember.

MR. ROBSON: $50,000. The records of Kelly, Andrews will show that with Richard Packing and every other stock, as of the beginning of January, the early part of January, there were no profits made closely approximating enough to warrant the payment of $45,000, which was paid in those three months, plus the Guys with Buys purchase. In other words, this witness, as his testimony now stands, he paid during a three-month period some 55 or 60 thousand dollars to or for the benefit of Deutsch, representing thirty percent of the profits of a bunch of transactions.

That means that there had to be $160,000, $170,000 worth of profits made. There weren't.

But in order to establish that, I have now got to go into other transactions that are not involved in this case. So I am caught between the devil and the deep blue sea. And the prejudice as a result is compounded.

Not only is there evidence in the record, but I can't even go in and refute that evidence without opening the door to all of the testimony about all of these transactions. And I think on that basis, the prejudice is so great to the defendants in this case that all of that testimony should be stricken, because it's putting us,

especially since the defendants have been indicted with respect to these other transactions.

MR. FEFFER: Your Honor, you will note that the second indictment related to Acrite, the one in October, and you did not ask one single question with respect to that.

THE COURT: I know that.

MR. ROBSON: I am not talking about that.

MR. FEFFER: I intentionally stayed away from that because that is the subject of another indictment.

A very simple question could be put, based on what is in evidence already: What are the profits from Kelly, Andrews & Bradley's trades with respect to stocks that Mr. Deutsch gave as of January 1969?

The answer can be given or charted out.

MR. ROBSON: But then I open the door.

MR. FEFFER: We will stipulate to that, your Honor.

If he has a record and he can show by the Kelly, Andrews & Bradley records that "X" number of dollars were made --

THE COURT: You might want to consider a very simple stipulation on that subject.

MR. ROBSON: Can you stipulate on what the profits were on any stocks that came from Kelly, Andrews &

*****

that.

THE COURT: Sustained.

Q Did you overhear what Mr. Walker said to members of the IRS?

MR. FEFFER: Same objection, your Honor.

Q Yes or no?

THE COURT: Answer yes or no.

A In my presence, yes, I was there, myself and Mr. Walker and another gentleman.

Q Did Mr. Walker state to them that he expected you to be a witness in some cases?

A Yes, sir.

Q And did he state anything to them which would indicate that they were to give you consideration and not prosecute you criminally?

MR. FEFFER: Objection, your Honor. Mr. Walker is available.

THE COURT: He is.

MR. SEGAL: This witness is available for that conversation, your Honor.

THE COURT: Oh, really?

Q Were you present during that time?

A Yes, sir, I was.

Q I am asking you whether or not during the time

that you were present with Mr. Walker and members of the Internal Revenue Service, Mr. Walker represented or stated to them that he would want them to consider not prosecuting you criminally?

MR. FEFFER: Same objection, your Honor.

THE COURT: Overruled.

A Mr. Walker told me that, in the presence of the IRS, that regarding criminal prosecution, that no action would be taken. But as far as civil action is concerned there was no way that he could give me any protection at all.

Q Did Mr. Walker state that to you in front of members of the Internal Revenue Service?

A Yes, sir.

MR. SEGAL: No further questions.

THE COURT: Mr. Robson?

only 2,850 out of total sales of 29,685 would you now say that those represented only an insubstantial portion?

A I would say so.

Q And if the figures were 10,400 out of 29,960?

A Out of how many?

Q 29,960., if those 10,000 purchases included just two transactions on one day would you say that except for those two transactions the purchases were insubstantial?

A Exclusive of the two transactions, yes.

Q Let me ask you about those two transactions;

Number one, is it not customary, actually a daily occurrence that large blocks of stock, large blocks particularly with relation to the number of shares outstanding are sold at bargain or reduced prices when people want to sell large blocks?

A Yes sir.

Q And wuld not 5,000 shares out of a total of 100,000 shares be deemed a large block?

A By all means.

Q Is there anything unusual, therefore, about the fact that there was made available to you from some source 5,000 shares at 28 at that time when the market was 30 or 31?

A (No response.)

Q When I say to you, I mean to any broker.

A To our firm?

Q To your firm.

A Well, to our firm, I'd have to say yes, I think it is unusual.

Q Unusual that you got the opportunity rather than somebody else?

A Yes, sir.

Q But what I meant was it is not unusual for 5,000 share blocks to be made available to a trading house, is that correct?

A That's correct.

Q It is your testimony that 30% of this profit was set aside in some fashion?

A Yes, sir.

Q Because the transaction was brought to you by Mr. Duboff, or told to you by Mr. Duboff?

A Yes, sir.

Q Mr. Duboff had it all arranged, he knew who the seller was going to be and who the b uyer was going to be and it was all arranged in advance, according to you , is that correct?

A Most of it, yes.

Q Had Mr. Duboff wanted to, was there any reason why he could not have purchased that stock himself and purchased it on the same day and made the entire profit?

A For his own account?

Q Yes.

A Yes, sir.

Q Yes, sir, he could have?

A No, he couldn't have.

Q He could not have?

A No, sir.

Q Why could he not have?

A I think it would have been a very glaring type of trade, extremely glaring type of trade.

Q You mean somebody else would have seen that he made a big profit?

A Yes, sir.

Q But other than that, there was no reason that he couldn't have done it?

A In his own name. He would have to do this in another name.

Q Why?

A Unless he informed the firm that he was with that he had an account at another brokerage house.

Q But you have no reason to believe that his firm would not have objected, do you?

A No.

Q As long as his firm knew, Mr. Duboff could have made the entire profit for himself; could he not?

A That's right.

Q There was no reason in the world why he had to give you 70 percent of the profit, is there?

A That is correct.

Q But the fact is, he did give you the entire transaction.

A Yes, sir.

Q And then took back 30 percent somehow by a subterfuge, is what your testimony is; is that correct?

A Yes, sir.

MR. ROBSON: I have no further questions.

MR. FEFFER: Just a few.

REDIRECT EXAMINATION

BY MR. FEFFER:

Q Were Mr. Duetsch and Mr. Duboff principals, as far as you knew, in Jaffee & Co.?

A As far as I knew, they were registered representatives.

Q They were employed by Jaffee & Co., isn't that correct?

A Yes, sir.

Q And profits that they made at Jaffee & Co. would go to the company Jaffee & Co.; is that correct?

MR. ROBSON: Your Honor, I asked nothing about profits in Jaffee and Company; I asked about profit that they could have made in their own name. Mr. Feffer knows that that is a normal procedure.

THE COURT : Objection sustained.

Q How many other brokers had accounts with Kelly, Andrews & Bradley?

A None.

Q Is that a fairly unusual procedure?

MR. SEGAL. I object to the question, your Honor. I ask that the question be stricken. There is no basis in the record for it.

THE COURT: He's answered your question, which is, no other brokers. I will sustain Mr. Segal's objection. Let the jury draw its own conclusion that that is unusual or not unusual.

Q I believe Mr. Segal made a reference to the indictment that charged certain co-conspirators: Mr. Weiss, Mr. Shrem, Mr. Rosenthal, and I believe it goes on to say and others to the grand jury known and unknown; is that correct?

A Yes, sir.

Q Who is Mr. Raymond Weiss?

A He was a registered rep with Allessandrini and Company.

Q How did you know Mr. Weiss?

MR. SEGAL: Objection, your Honor.

THE COURT: Sustained.

bmv 1

*****

MR. SCHATTEN: The government, your Honor, calls Mrs. Ruth Appleton.

R U T H D. A P P L E T O N, called as a witness on behalf of the government, being first duly sworn, testified as follows:

MR. SCHATTEN: May I proceed, your Honor?

THE COURT: You may.

DIRECT EXAMINATION

BY MR. SCHATTEN:

Q Mrs. Appleton, are you an attorney?

A Yes, I am.

Q What do you do for a living?

A I am employed by the Securities and Exchange Commission in Washington, D.C.

Q What specific position do you occupy with the Securities and Exchange Commission in Washington?

A I am the chief of the branch of small issues of the main office of the Commission, in Washington.

Q What are your duties as cheif of the branch of Small Issues in Washington?

A I oversee the administration of Regulation A filings that are made with the regional offices throughout the United States, among other things.

Q Will you tell the Court and jury what a

principally because in a Regulation A filing certified financial statements of the company making the offering is not required, whereas in a full registration it is required and that could be a more costly item. It is more convenient than full regustration because the filings are made with the regional office and in this way the company and its counsel have easy access to the staff to discuss whatever problems they have.

Q Does the Securities and Exchange Commission regulate the offer and sale of securities?

A Yes, in the sense that the Commission has adopted rules and regulations which must be complied with, and also it requires full and fair disclosure concerning the affairs of a company, its financial condition, and so on, before an offering can go public.

Q Are you familiar with the underwriting process?

A Yes.

Q Would you tell the Court and jury, Mrs. Appleton, what an underwriter is?

A Well --

MR. SEGAL: OBjection.

MR. ROBSON: If this is now asking this witness for her legal opinion as to what is one of the charges in this case, I strenuously object to it.

THE COURT: You don't object to Mrs. Appleton's qualifications as an expert, do you? If you do, we can have an inquiry made relative to her background and experience in this area.

MR. ROBSON: My objection has nothing to do with her qualifications, which I'm sure are more than adequate. My objection is to the propriety of a witness testifying to a conclusion of law and of fact which must be made by the Court and by the jury.

THE COURT: Well, this is, to a certain extent, a mixture of law and fact, and the jury is going to be supreme here, as I have told them already, relative to the fact, but I think for the guidance of the jury, so that they can determine the fact, they should have some background and the way in which I think the background could be best presented is through an expert.

So I will accept Mrs. Appleton'as an expert witness, I will permit her to giver her opinion, and then I will suggest to the jury that they may give as much or as little weight to her opinion as they thing that her opinion warrants.

So you will listen to Mrs. Appleton, observe her testimony, and you will give her views on what is an underwriter and anything else she may be called upon to

*****

in her present capactiy?

A THE WITNESS: Since September of 1972.

THE COURT: How long have you been with the Commission?

THE WITNESS: More years that I like to remember. Specifically, 1938.

THE COURT: Could you tell me if you are familiar with the definition of what is an underwriter as it was known in March of 1969?

THE WITNESS: Yes.

THE COURT: Could you then answer Mr. Schatten's question, and tell us within that time frame -- you want to know what is an underwriter?

MR. SCHATTEN: Yes, your Honor.

THE COURT: What is or what was an underwriter within the time frame of March of 1969?

THE WITNESS: An underwriter can be anyone who is engaged to sell the securities of the company that is making the offering or anyone who purchases the securities of a company with the view to reselling it to the public, or it can be anyone who is directly or indirectly participating in the offering.

Usually it is a professional broker-dealer that is engaged in this type of business, but it could be

anyone that fits into that capacity.

Q Typically, an underwriter receives compensation for his efforts?

MR. ROBSON: Your Honor, I object to the leading.

THE COURT: Yes, of course. I think there should be no leading.

Q Would you tell the Court and jury how the underwriter is paid, if the underwriter is paid?

A Well, the underwriter is usually paid out of the proceeds that will be received from the sale of the securities. However, he can be compensated in the form of warrants to purchase stock of the company or options or bonus shares, or he could be an underwriter without compensation, or it may be a combination of cash and options, warrants or bonus stock.

Q Would you tell us what in 1969 the procedure was under which a corporation would make a public offering under Regulation A? What I am asking for is what documents would they have to file first?

A They have to file a notification on Form 1A, the exhibits that are called for by the form, and a pamphlet which is called an offering circular.

Q What is a notification on Form 1A?

A The notification has specific items which must be responded to which would include the identification of the company that is making the offering, its officer and directors, any unregistered securties that have been sold within the past year, and information of that type which must be specifically responded to.

Q What is an offering circular?

A An offering circular is a pamphlet, or you might call it a brochure, that not only must be filed with the Commission, but it also must be used in connection with the offering, and it contains specific information that is required by the regulation, as well as full and fair disclosure of all material information that an investor should be aware of to help him make a decision whether or not he wants to buy the stock, or any other securities that are being offered.

Q Would you tell the Court and jury what information must be set forth in the offering circular?

A Well, the type of securities that are being offered, the price at which the securities are being offered, and this could be a fixed price or it could be, if there is a market for the stock, at the market, in other words, the market price of the stock being traded at the time of the particular transaction, the commissions

that are to be paid to underwriters, if there are underwriters, the expenses to be paid to the underwriter, if there is one, or underwriters, the other expenses of the offering that will be incurred by the company, the terms of the offering, the plan of distribution, that is, the method and the manner in which the offering will be made, the identification of the underwriter and his address, the risk factors that an investor should be aware of before he makes a decision whether or not he wants to buy the securities, the use that will be made of theproceeds that will be received from the sale of the securities, the type of business that the company is engaged in, its products, and so on. The identification of management, the officers, directors, principal security holders, controlling persons, and what their material interest is in the company, whether it is a direct or indirect interest, the salaries they will receive, as well as the financial statements of the company, and information of that type, including any other material information necessary for an investor to reach an informed judgment as to whether or not he wants to purchase the securities.

Q You mentioned the terms of the offering have to be disclosed in the offering circular. What do you mean when you say "Terms of the offering"? What does that

expression mean?

A In addition to the number of shares that are being offered, if it is stock, the price at which it is being offered, and that would be either a fixed price or, as I mentioned, a price which will be determined by the market. In other words, the securities will be offered at the market.

And the commissions to be paid and any other compensation that might be paid. As I said, it could be cash commission, it could be a combination of cash and warrants or bonus stock, options and the expenses to be paid to the underwriter, the manner in which the offering will be made, the methods to be used in making the offering, and who is the underwriter.

Q You also stated that the plan of distribution is to be included in the offering circular. What do you mean by the term "plan of distribution"?

A Well, exactly how the offering is to be made. It is contemplated that when a company goes public that the offering will be made to the general public. If it is not, then it should be fully disclosed. For instance, if there is any securities that are to be alotted to certain persons --

MR. SEGAL: Your Honor, I am going to object

to any further questioning in this regard.

The conclusions stated here go to ultimate issues.

THE COURT: Overruled.

MR. BLOCK: If your Honor please, I also have an objection, I think, although I join in that objection. I think what we are getting is really sort of a general course in securities law and I think that the matter should be addressed to the issues in this case.

5/6/74
PM 4b

THE COURT: Don't you think it might be a little helpful to the jury that they are given background? This is not something which is known in the common experience of most lay people. such as the jury in this Court, and I would suggest that an informed and enlightened jury is going to be the best possible jury to determine any case, and for us to utilize words -- and I have tried to do it in my own way throughout the course of this trial --

MR. BLOCK: So have I.

THE COURT: I know you have, and all counsel have.

There is just nothing in this area which I should think we should not enlighten the jury on definitionwise, and then each of you can argue strenuously to your position.

So far, this witness' testimony has been what I consider background in an area which I consider one of the more complex in the law and, therefore, to the extent you have objected, and I really don't think you have objected, but, in any event, I will permit this testimony.

Q I believe you were discussing what a plan of distribution is when you were interrupted.

Would you tell the Court and jury what a plan of distribution is?

A Yes.

As I said, when a company goes public and makes an offering of securities to the public, it is contemplated that the securities will be offered to the general public.

THE COURT: If the company was going to make a complete private placement of its stock, you wouldn't need this offering circular, would you?

THE WITNESS: No. I am assuming, your Honor, that you are talking about a private placement that is not filed with the Commission?

THE COURT: Let's say of letter or restricted stock.

THE WITNESS: Yes.

Q Would you tell the Court and Jury what is a plan of distribution, as you understand that term?

A Let's see where I left off --

MR. SEGAL: The original questioning was what is in an offering circular, and then a plan of distribution --

THE COURT: What is one of the things in that circular, and since the witness has chosen to utilize the term, she is being asked to explain it. It doesn't really have that clear a meaning, at least to this Court, and therefore I would ask that she follow up on that.

If you wish to object, you may do so.

Q You used the expression if the stock is going to be sold in the market or at a fixed price, that has to be set forth in the offering circular.

What do you mean when you say the stock is going to be sold at the market?

A Well, if there is a market for the stock, then the securities can be sold at the market, which means whatever the market price is at the time of the transaction. In other words, it is not a fixed price at which the stock will be offered to everyone, at that fixed price.

In a market price, it could vary from day to day or from transaction to transaction.

Q What is the reason that the underwriter, the description of the underwriter and the identification, must be set forth in the offering circular?

A Well, this is important to an investor to know who he is dealing with. He might be concerned about the reputation of the underwriter, also the ability of the underwriter to make a successful offering, whatever his track record may be.

He will also be interested in knowing the underwriter from the standpoint that after the offering is completed, this will provide sort of a market place for the investor to either dispose of his securities or he

might want to buy some more.

Q You stated that the use of proceeds must be set forth in the offering circular.

What is the purpose of including the use of proceeds in the offering circular?

A Well, this is one of the most important items in the offering circular, because this is what it is all about: The company is trying to raise money for its business, whatever that purpose may be, and the investor should know exactly how the company intends to use the proceeds from the sale of the securities.

He has a right to know what the company is going to do with his dollar bill.

THE COURT: Indeed, he is investing in the company at that point?

THE WITNESS: That's right.

Q Are you familiar with the term "insider"?

A Yes.

Q What is an insider?

A Well, an insider --

MR. SEGAL: Your Honor, I am going to object to this.

Is there any relevance to this?

THE COURT: I am just thinking back over the case --

MR. FEFFER: Your Honor, I might bring to your attention that Section 10b(5) is included.

(Pause.)

MR. SEGAL: Your Honor, I wonder if we may approach the side bar?

THE COURT: You may.

(At the side bar.)

MR. SEGAL: Your Honor, I am going to object to any further testimony from this witness. I don't know that we are in a state in this case where this type of witness is in any way essential,particularly where the witness, because of her background and her employment, is coming on here to give us supposedly background information which goes to ultimate facts to be determined by the jury.

Now, uniquely, in this case, both the Court and counsel have done more in this case than I have seen in months in explaining terms, background, ideas, relating to this entire public sale area of securities, and I don't know that when you get into areas of "insiders," that merely the expression of the fact that 10b(5) is one of the areas in this case we are being charged with, and that in and of itself makes that aspect of that section applicable here.

Secondly, I dispute that it is necessary that we

even have a conclusion from this witness as to what is an underwriter, since she would be attesting to a fact to be proven by the Government, and I must say that coming in as an expert or not, that doesn't allow her to usurp ultimate questions to be determined.

THE COURT: I thought I made that very clear to the jury when I gave my cautionary instruction.

MR. SEGAL: I think you did, your Honor, but I am not sure for what other purpose this witness is here.

THE COURT: Let's just find out something --

MR. SCHATTEN: Your Honor, may I briefly respond to Mr. Segal?

THE COURT: You may, but give me a chance, if you would.

Looking again at the means paragraph, there were certain items which were specified, for example, relating to the proceeds.

I really have difficulty with this immediate problem of the definition of "insiders."

MR. SCHATTEN: Your Honor, we will endeavor to show that this witness' definition of "insiders" encompasses, among other people, underwriters and people of that sort, and I am then going to endeavor to ask her if insiders are receiving stock in connection with the public offering,

these facts would have to be disclosed.

The idea would be that that is directly related to the charges set forth in the information.

I might further add that the witness Malmon on the cross-examination by my brother counsel was asked all sorts of questions about underwriters, and that sort of thing --

THE COURT: Yes, he was. That is one of the reasons I permitted the inquiry here.

MR. SCHATTEN: It seems to me that this witness, being uniquely qualified, should be allowed to go into that area.

THE COURT: Was anyone asked questions about insiders?

MR. BLOCK: No.

MR. ROBSON: Furthermore, the questions asked dealing with underwriters were not general questions. I didn't ask any witness to define an "underwriter." I asked him --

THE COURT: I wouldn't warrant that during Mr. Malmon's testimony. I think some of the questions went off the direct point and, under the circumstances, this particular evidence is already in, but there is the immediate matter of what is an insider, and I really don't --

MR. SCHATTEN: I could make the question, "What do you understand the expression 'closely connected with the company' to mean?"

THE COURT: I don't think it requires testimony, as far as that is concerned. We are not really talking about insider trading in the true sense here.

I have permitted you to cover the area set forth as means. I think that is sufficient.

Let me just go further: What other areas do you expect to explore with this witness?

MR. SCHATTEN: I expect to elicit certain hypothetical questions with the witness with respect to our particular fact situation,and I would like to go into Form 2-A --

THE COURT: Form 2-A I will permit you to inquire about. I think that has been covered.

The hypotheticals, though often used with doctors and other experts in civil cases, seems to me questionable here.

I do have some reservations about usurping the jury's function. I think enlightenment is fine and I have admitted testimony based on that theory.

I have difficulty with your hypothetical questions. I have not heard them yet, but I would suggest I have some

difficulty, because I do not want to usurp the jury's function.

MR. SCHATTEN: I would go into the same areas defense counsel inquired of Mr. Malmon on, is Kelly, Andrews & Bradley an underwriter --

THE COURT: If you will track what has already been done by defense counsel with MR. Malmon, I think that provides an open door, and I know counsel may be disturbed about that, but I will do that. I don't really want to go beyond that. I gave them latitude on cross, and I feel, in kind, I should do likewise, but I am not anxious to go beyond that.

MR. ROBSON: If your Honor is going to permit a hypothetical, provided it stays within the same area we may have already gotten into, then I request your Honor have the Government provide us with that hypothetical since it will include facts, and before the matter is presented in the presence of the jury, we should have an opportunity to find out whether the hypothetical is based on facts in evidence and, two, so that we can determine before the question, because I don't want to be in a position to have to object to the question as though I am trying to conceal something from the jury after the question has been asked, and I believe improperly asked.

of 4b

6/74 5a

1 elmch Appleton-direct

THE COURT: You can ask for a side bar if you see something in that respect that you want to raise. I am not going to require a pre-screening of the question. Mr. Block. I think you had something.

MR. BLOCK: I wanted to raise this very substantive question, your Honor.

Obviously, in the light of the testimony of Malmon, particularly on cross-examination, one of the defenses Cohen has in this case is reliance on advice of counsel.

THE COURT: You can go into that with her.

MR. BLOCK: No, just wait a second.

Malmon is his lawyer. Malmon takes the responsibility for doing all of this. The rule of law is that even if counsel is wrong, if counsel is advised of all of the facts by the client and still does the wrong thing, it's still a defense to his client.

In that state to bring in somebody who in effect is going to say that Malmon was wrong in what he did, and it's extremely prejudicial, in my opinion, and unfair as far as the defense of Cohen that he relied on the advice of counsel.

Isn't that an additional vice to this testimony here, your Honor?

THE COURT: If one were to accept your premise, there might be a basis for the conclusion.

MR. BLOCK: What is wrong with my premise?

THE COURT: Your premise is that Malmon was told everything by his client, and I think there is argument on that score. If he wasn't told everything, the client reads English, too, it would seem to me one could not take refuge behind the attorney defense.

If you want to inquire of this witness on cross-examination as to whether or not a business man who employs an attorney is entitled to rely on that attorney, you may do so. I am going to permit that, because this is a valid argument that can be raised.

However, I don't think that because I would permit that I should preclude this area.

MR. BLOCK: Let me just refresh your Honor on this. It is true that Malmon was very equivocal about whether he knew about Kelly, Andrews & Bradley being the billing agent before the offering became effective. But there is no doubt, your Honor, that he knew about it afterwards, and that it was his choice, and his testimony was very clear on this, it was his choice not to disclose it in the 2-A.

We are going to get into the 2-A, and this, as I

say, cuts the ground out from under Malmon, and by doing that it cuts the ground out from the defense, and Malmon knew all the facts at the time he filed the 2-A and he could have straightened all this out, and he didn't.

THE COURT: You can try Mr. Malmon in absentia, if you wish.

MR. BLOCK: I don't have to be put in that position; that is my point.

THE COURT: If you choose to stand behind the attorney defense, then if that defense proves weak, you are in trouble, and I don't see how you can choose to stand behind it and not accept the consequences.

If you choose not to, if you take the position that Malmon deceived his client, that is another story.

MR. BLOCK: He flubbed the dub as an SEC lawyer.

THE COURT: Whether he did or did not, as this testimony is developing, I have some grave reservations about that point, but I don't want to get into that now. I don't see the relevance and materiality of the insider definition. That is the first order of business. Therefore, I would sustain an objection on that question.

Relative to your remaining inquiries, I will listen, but I would suggest that they should try to track the information as presented to the Court. I think that is

valid.

MR. SEGAL: Your Honor, I don't think this witness should be allowed to even, as expert as she may be, should be allowed to offer an opinion to an ultimate fact in this case. And I think she is now usurping the function of the jury, who are the triers of the facts, and she is usurping the function of the Court, because the law as to who is an underwriter, the law as to whether or not it is required, is something that is supposed to be a matter of statute, and it is a matter that can be included in the Court's charge.

To allow a witness, therefore, to come in and to talk about these ultimate conclusions, I would say perverts it.

THE COURT: I disagree. Let me suggest something. I note we have been at the side bar for a few minutes, and we are approaching 4:30. I think it would be appropriate if we took our recess at this time.

If you want to review the matter further with me after the jury has left, I'd be happy to do that. But I think this would be an appropriate time to take our recess.

I should like to resume tomorrow morning at 9:30.

MR. SEGAL: In that regard, may I please ask my

client about tomorrow morning? He had made a request earlier and he wasn't sure, he was going to check, as to whether it might be necessary for him in the morning because of a pressing engagement.

THE COURT: Sure.

(In open court.)

THE COURT: Ladies and gentlemen, we are going to be taking our recess now. I have discussed that with counsel, and I will be with you in just a moment.

(At the side bar.)

MR. SEGAL: It's all right for 9:30.

THE COURT: All right.

(In open court.)

THE COURT: Ladies and gentlemen, we are going to recess for the day at this time. I am going to give my usual admonition to the jury, which is, please do not discuss the case among yourselves nor remain within the presence of any other person who may be discussing the case.

Again, in the unlikely event you should read anything about this case in the newspapers, if we have any newspapers by tomorrow, or if you should hear anything about this case on the radio, or see anything about the case on television, I direct that you report the matter to me at once.

Finally, I ask that the jurors keep an open mind on all facets of the case until the case has been concluded and presented to you following my charge.

Finally, we will recess now and resume tomorrow morning at 9:30 a.m.

Good night. You may stand down.

(The witness leaves the stand.)

(The jury leaves the courtroom.)

THE COURT: Let the record reflect that the jury has been excused and I understand that counsel have one or two matters they wish to take up with the Court before we adjourn for the day.

MR. FEFFER: Your Honor, may we respond to some of the comments that were made at the side bar by counsel?

THE COURT: Yes, and then I will hear from defense counsel.

MR. FEFFER: With respect to the first and main point, I think, raised by Mr. Segal --

MR. SEGAL: Your Honor, I wonder whether or not Mr. Schatten shouldn't handle his own witness and his own arguments. We have been brought up on that and I would, if the Court would agree, would insist that Mr. Schatten make this argument.

MR. FEFFER: I don't think we are under any

7 elmch

obligation. It is true that when a witness is on the stand that the same person who is doing the examination should be the one who is making the objection --

THE COURT: It does seem that I have heard from both Mr. Orenstein and Mr. Block at the side bar, and I probably would have heard from co-counsel if Mr. Robson or Mr. Segal had someone here. That is the way of the case.

I will listen to any one of the lawyers at this point in the day, any one of the lawyers who wants to address the Court.

MR. FEFFER: Your Honor, to the primary issue that was brought up at the side bar by Mr. Segal, I believe he was objecting to the general nature of Ms. Appleton's testimony because it goes to the ultimate issue.

Number one, your Honor, I believe the law is clear in this Circuit that an expert witness may testify to facts going to the ultimate issue.

THE COURT: I am letting her testify so I think it's pretty clear that I am following that general theory.

MR. FEFFER: Secondly, your Honor, I am somewhat dumbfounded because I believe Mr. Segal made reference to bringing Mr. Lewis Loss into this courtroom and I'd be somewhat troubled as to what he'd be testifying to other than similar testimony to what we are hearing today.

And lastly, I think that Mr. Malmon, who is allowed to be used as an expert not only in matters relating to law, but in matters relating to stock brokerage terms, over which we objected --

THE COURT: And I permitted it.

MR. FEFFER: Right.

So it's quite clear that Mr. Malmon was utilized much more than his knowledge of the facts, but he was utilized as an expert by defense counsel.

THE COURT: I made most of those points at the side bar, and I subscribe in general to them.

There are limits, however, as when something about insiders has not been gone into previously, I suggest we not broaden this to an extent that would go beyond the tracking of the information.

MR. BLOCK: Your Honor, a thought occurs to me. It hasn't been raised before.

The Government puts Malmon on the witness stand. My own private view is that this was a big goof on the part of the Government. That is my private view. But they did put him on the witness stand. This was their witness as in support of an important angle of this case, to wit, the alleged falsity in the offering circular. They put him on. He testified; he was cross-examined.

Now, what they are trying to do is to contradict their own witness with another witness.

The fact that we are thinking of calling our own expert was because we wanted to bring an expert to contradict anything that, let us say, might have been unfavorable to the defense, and I can't think of anything at the moment that Malmon said. But that is what we had in mind in calling our own witness as an expert. The fact that we mentioned possibly calling Loss it seems to me does not justify the Government in bringing in an expert on top of Malmon, your Honor. And I wanted to make that point to you.

I just don't understand it; it seems to me to be crazy.

THE COURT: You have made the point. I must suggest I don't agree with it, so we'll leave it at that. But you have made the point.

Incidentally, let me suggest one thing. I think the fact that the Government puts on witnesses in a criminal case where, very frankly, one takes his witnesses where he finds them, is not really the same vouching that one might be required to stand behind if one were putting his own plaintiff on, for example, or his own defendant on in a civil case.

So, under the circumstances, I think the Courts generally have permitted a fair degree of latitude in this area and on this subject, and I will go one step further: In a way, Mr. Malmon was two separate witnesses. On direct examination, in essence, he was called as a fact witness; and on cross he became, first, a character witness, which I permitted, and then at the behest of defense counsel, an expert, an area of inquiry which I also permitted.

So really in part what I think I have done is, I have permitted the defense to call an expert while the Government was presenting its case.

You may disagree with that, but for all the reasons that Ihave given, some of which you may agree with, some of which you may not agree with, I think I am within the bounds of my discretion in permitting the expert testimony of this witness subject the cautionary instructions which, of course, I tried to give to the jury this afternoon.

Mr. Segal, I believe you wished to address the Court also.

MR. SEGAL: Yes, your Honor. I think that one of the problems that we have here is that when the government calls a witness and that witness doesn't pan out for the government, that doesn't, because of the areas they have opened up by their direct examination, therefore of necessity the areas that are gone into on cross examination, that doesn't open up a topic whereby the defendants are supposed to abdicate their objections to the basic testimony in the first place.

So that if the government pulls one trigger and that tkes one instant and buckshot pervades the room and we have to spend ten hours in taking that buckshot out, that doesn't mean that we are of necessity either broadening or going into areas or opening up areas. It is necessary to shut those off. It takes longer and you have to go into a much wider scope. So that wehn we have the government now supposedly building on the fact that we have used their witness as an expert as justification for their bringing in an expert, we are getting a little bit perverted as to the sense of what the function of cross and direct examination is.

But the point that I really want to make is that when the government chooses to put an expert on the stand whose very function is enforcement, and when the government

elv

is getting from that individual an opinion as to the efficy or the propriety of a particular case, it would, I submit, be about as proper as calling Mr. Curran here to relate what his opinion is given the facts of the case as brought by the government. I see no difference.

THE COURT: In other words, you think ghe government should retain and pay Mr. Loss to come here so that you'd have an independent expert?

MR. SEGAL: No, your HOnor. I think the government must try a criminal case by the facts that are elicited by its witnesses to the facts that occurred in the case and the facts upon which these men are supposed to be judged guilty as a basis of the indictment. And that is where they are limited.

For the government to bring experts to the ultimate facts would make a mockery of all criminal trials. We don't need it, if the government can pick up one man from the IRS given a given set of facts saying that that man evaded taxes, one man from the FBI say yes, that man stole a car, and here have somebody coming in from the SEC saying yes, there was not an underwriter that was named and it should have been named based on the facts as we have delivered them in our indictment. I think we are reaching a point where it gets a bit absurd. And the point

is that the government now is choosing through a specific witness to lay in the record that which its evidence does not itself allow. And to do that, as I indicated at the side bar usurps both the Court's function and usurps the jury's function.

I have been about, and I never thought I'd be in this position, your HOnor. I always used to resent as a young assistant having defense counsel tell me, I have never seen anything like that in my life. I for the first time am saying this, I never saw anything like this in my life, because it is a situation in which you are ultimately being asked to examine a partisan witness who is so openly and basically partisan in this case, that no amount of cross examination is ever going to defer him.

Not that every witness isn't partisan, but that this particular witness called as an expert to an ultimate fact gives us the kind of a witness, the very kind of a witness who can never be cross examined, who can never rebut what the mischeif is that can be done. So that what I am saying is that this witness is in an area, aside from the general basis which is improper. This witness is testifying to hypotheticals which only come up because of the fact that the government itself chose to put other witnesses on testifying to a series of facts.

And that does not allow this witness a basis for conjecturing on the basis of any examination that has been held before.

MR. ROBSON: I don't think I can add a great deal to what Mr. Segal said with respect to the basic objection because he's covered it extremely well. I'd like to make two points.

One is the government has represented that there are many cases which clearly set forth that expert witnesses are permissible in criminal trials. One I have had some question about how clear many of the other cases are, and I severely doubt that it is that clear. I must agree with Mr. Segal's statement that in my experience I have never seen an expert witness testify in this manner. It is possible that expert witnesses could be available or could be availed of in circumstances where the expert is testifying about some fact pattern which required some expert testimony for the jury to understand. But we are not dealing now with expert testimony which the jury may or may not be able to understand.

We are talking now about testimony about the facts in this case which any layman should be able to understand if we are to have a fair trial, and more important, we are talking about expert testimony about the law, which

your Honor is supposed to be the expert on and which I have every reason to believe from what I have seen of this trial, your Honor knows just as well as the witness.

Your Honor is going to charge the jury on what the law is and what they must find as far as underwriters and plans of distribution, etc. are concerned. The damage goes even further when this witness is going to be permitted to answer hypothetical questions which presumably will involver her testimony to the effect that in her opinion these defendants are guilty of a crime.

She may not use those words, but in substance that is what she is going to be saying. With respect to the question of whether or not we opened the door, I will review this testimony at night to be certain that I am not in error at any point, but I did a good deal of that cross examination of Mr. Malmon insofar as his knowledge of securities laws is concerned, and except for a few areas where questions were asked and they have been through the trial for the purpose of getting the jury to understand some of the terminology, he was not used by me as an expert.

THE COURT: Let's stop right there. I have been looking while you and Mr. Segal have been talking and I have been listening, and from what I could see, we all,

and I include the Court in this as well, put questions to Mr. Malmon which might be called expert. Let me give you but one example:

We are on Mr. Block's cross examination, because it comes first, bottom of page 172, line 25. We are talking about restricted stock:

"Q Doesn't -- you tell us what restricted stock is. You're the expert."

An answer follows. I must suggest that my recollection is that all of us, and I would not exclude the Court from this, asked questions of Mr. Malmon in that general vein in various areas of securities law during the course of his cross examination.

I do not recall that that occurred during the direct, but I don't think that is really a determinative factor.

MR. ROBSON: The point I am making though is that the only questions that were asked in that area were questions designed to explain his testimony. He testified about restricted stock and in order for the jury to understand what his testimony was about, we said what is restricted stock. When he testified about an offering circular, he was asked to tell us what an offering circular was, what he was testifying about.

The other areas, there may have been question from time to time of the witness as to whether or not something was a common practice. But that was not for the purpose of having him testify as an expert as much as rather for the purpose of having him establish the existence or non-existence of unlawful intent on the part of the defendants with respect to any particular transaction.

Furthermore, your Honor, in view of Mr. Malmon's testimony that hewas aware of Kelly, Andrews & Bradley's involvement within a matter of a few days after the underwriting became effective, not only is there no question about what he knew, he knew more than what is the fact.

As far as he was concerned, Kelly, Andrews & Bradley would handle the entire 10,000 share block all on its own. And he admitted that he never asked anybody for details and that he never included it, although he probably should have but it was an oversight on his part. In the face of that testimony, I submit that that whole count falls and should be dismissed at this point. Not only shouldn't there be any expert testimony, there should be no further testimony on the subject.

How can these defendants be charged with having wilfuly and unlawfully failing to include certain information in a prospectus when the attorney says "I knew about

elv

about these facts, I made no inquiry on the details, and I made no provision for determining it."

THE COURT: It strikes me, Mr. Robson, that you have some material for the cross examination of Mrs. Appleton which could be useful and you may, if the defense has a chance to proceed with any of these counts after the close of the government's case, wish to put on your own experts in the matter. But I would suggest that at this juncture, based on the type of case we have here, based on the present state of the record as I have recalled it, I am going to permit this witness to give her opinions as an expert.

Again, I say, and I have given the cautionary instructions to the jury, the weight which they give to her opinions will obviously be determined by the credence they give her relative to her background. And if as you say, one of you gentlemen said, it is like calling Mr. Curran, the United States Attorney, this may be a very good, compelling argument to make at some time to this jury to indicate the bias of this witness in the fact that she does not have the depth and perspective which is required of a true detached expert. But remember this:

No one has ever said that an expert need not be an employee of one side or the other. I always thought

that that went to the matter or interest and weight, and under the circumstances I feel that way here.

So I say this in conclusion:

I recognize the points which have been made. I am going to permit further testimony from this witness and when I have heard all of her direct you may have some applications to make. I will hear you, obviously, at that time. And if there are areas during the course of her direct which are beyond what is relevant and material as set forth in the information, I would hear specific objections.

We will recess at this times and resume tomorrow morning at 9:30.

MR. FEFFER: Your Honor, I believe you indicated that we would discuss the possibility of certain stipulations. I think today's gone by and we keep meaning to get to this. We never get to it.

THE COURT: I would suggest counsel discuss those among themselves. If they arrive at a stipulation, fine. If we wish to present a matter to me for stipulation, that is acceptable. Is that satisfactory?

MR. FEFFER: Yes, your Honor.

THE COURT: I would ask that counsel do that. I don't think it helps anyone to not stipulate on matters which are clearly not an issue.

(Adjourned to May 7, 1974 at 9:30 a.m.)

UNITED STATES OF AMERICA

v.

MILTON COHEN, et al.

May 7, 1974
10:00 a.m.

- - -

(Trial resumed - jury present.)

THE COURT: Good morning, ladies and gentlemen.

Mrs. Appleton, you may resume the stand, and you will be continuing your testimony under the oath which was administered yesterday afternoon. Do you understand that?

THE WITNESS: Yes, I do.

R U T H A P P L E T O N, resumed the stand and testified further as follows:

DIRECT EXAMINATION CONTINUED

BY MR. SCHATTEN:

Q Are you familiar with the term float, Mrs. Appleton?

A Yes.

Q What does that term mean?

A Float is the securities that are in the hands of the general public that is available for trading purposes in the open market.

Q Yesterday you were testifying, and I believe

sale of those shares, the use that has been made of the proceeds by the company up to that point, updating any information as to the nature of the business or if there have been any changes in management, and also who is doing the selling.

Q What is the purpose of the "use of proceeds" section in the form 2A?

A Well, that is to inform the Commission, as well as the public, how the company is spending the money that it receives from the sale of the securities to see whether or not is is using the proceeds in the manner and for the purpose that have been disclosed in the original offering circular or the offering circular that is being delivered to the public.

Q When a corporation is selling stock to the public under Regulation A, is engaged in a public offering, whatif anything does it have to do with the offering circular? I would like to focus your attention back to 1969.

A In 1969 an offering circular had to be delivered to the prospective investors either before or at the time of the sale.

Q You have talked about full and fair disclosure of material facts; what happens if there is a failure to

disclose all the material facts?

MR. SEGAL: Objection.

THE COURT: Well, I am going to permit the witness to answer.

This, ladies and gentlemen, will be of a general nature and will not in any way be determinative of anything that may have occurred here. It is up to you to determine in this case whether there was any failure to disclose facts and we will get to the point of whether or not those facts are material. This is strictly background and should not be considered by you as proof that there is anything improper in this case.

MR. ROBSON: Subject to your Honor's ruling, I join in Mr. Segal's objection. At the very least, I think the question should be somewhat narrowed. The words "what happens after" --

THE COURT: Do you have a suggestion?

MR. ROBSON: I don't know what Mr. Schatten is looking for.

THE COURT: Perhaps you can narrow the question somewhat and the jury will listen to the answer with my cautionary instruction in mind.

Q Talking from the standpoint of the investor, what if there is a failure to set forth all the material

facts in the public offering?

MR. SEGAL: Objection, your HOnor. This witness is not an expert on individual investors. She values, if anything, as an expert in the SEC area.

THE COURT: Let's find out what procedures are followed. She should know something about that, indicating, as she has, her background.

Let's find out what procedures are available, assuming for the moment that this situation described by Mr. Schatten is in fact the case.

A Well, the investor would be misled, because --

MR. ROBSON: Objection, your Honor. That's the whole point, your Honor.

THE COURT: Please sit down, gentlemen. The investor could bring a civil suit, could he not?

THE WITNESS: Yes, he could.

THE COURT: Let's go on from that point.

THE WITNESS: Should I continue?

THE COURT: No. Let Mr. Schatten go on.

MR. BLOCK: Coulr your Honor explain what a civil suit is to the jury?

THE COURT: Yes. You are here, ladies and gentlemen, considering a criminal case. This particular suit we have here can be described as a criminal action.

THE COURT: Sustained.

Q In your opinion, is the company required in an offering circular --

MR. SEGAL: Objection.

THE COURT: Let him ask his question, please.

Q In your opinion, Mrs. Appleton, is the company required to disclose the name of or the identification of the underwriter if in fact there is one in a public offering?

A Yes.

Q In your opinion, Mrs. Appleton, if there is a failure to reveal in the offering circular the full compensation that the underwriter is receiving, is that a failure to reveal all the material facts in the public offering?

MR. SEGAL: Objection.

THE COURT: Yes. Why don't you rephrase your question.

Q In your opinion, if compensaion is going to an underwriter in a public offering and the offering circular omits to state the full nature of that compensation, is that a material fact or failure to reveal all the important facts?

MR. SEGAL: Objection.

THE COURT: Sustained. It is to form. If you can just narrow your question down, I am permitting an

inquiry in this area to give backgfound to the jury. It is not on the merits, it is on the background.

Q In your opinion, Mrs. Appleton, it is required in the offering circular to state the full compensation going to an underwriter?

A Yes.

Q What is compensation, as under that term?

MR. SEGAL: Objection.

THE COURT: I thought we had some testimony yesterday, relative to compensation to underwriters, but if this witness didn't testify on that, since the matter was gone into with the prior witness, I will permit it. You tell me that there was no testimony along these lines yesterday afternoon, I will permit you to inquire.

MR. BLOCK: My recollection, your Honor, is that the witness talked about warrants and all of that kind of thing, as well as money as compensation and I think that it was fully covered yesterday.

THE COURT: My own recollection is that the witness testified, Mr. Block, and I agree with you, that underwriters are paid by the proceeds of the sale, options, warrants, bonus stock or cash or, as I recall, in certain circumstances there is agreement that the underwriter will receive no compensation.

THE COURT: Do you object to the form of the question, Mr. Segal, or to its relevance, competence or materiality?

MR. SEGAL: I object to the form and I object to the inclusion of facts not within this case.

THE COURT: Try to ask another question very clearly, limiting the scope of the question to facts presented in this case.

Q In your opinion, if a broker-dealer in a public offering bills purchasers of stock in that public offering, mails out confirmations, and also transmits the proceeds that it received from purchasers of that stock to the company, is that broker-dealer, in your opinion, an underwriter?

MR. SEGAL: Objection.

THE COURT: Overruled.

MR. BLOCK: I object on the ground that this goes to one of the issues which the jury will have to decide in this case.

THE COURT: I would hope it would. That would make it relevant.

As far as this witness determining the case, the jurors will utilize the background she has given them in order to intelligently determine the central issues

in the case.

The answer given by this witness is not to be considered by you as determinative; it is to be considered as background which may or may not be helpful to you as lay people in determining the issues in this securities type case.

MR. SEGAL: Your Honor, I would also pose a further objection, based upon the fact that upon these facts alone it is impossible for this witness to reach a simplistic answer.

THE COURT: If she cannot, she will be the first to say so, I think.

Let's have the question read back and if she can answer it, I direct her to do so.

(Question read.)

A Yes, if it is part of the public offering, if he is participating in the public offering.

MR. SEGAL: I ask that be stricken, your Honor. That is not responsive.

THE COURT: It is not going to be stricken.

I would like you to follow up with that last comment, if he participated in the public offering. I don't understand that and I am not sure the jury does, either. What do you mean, "participates in the public

offering"?

THE WITNESS: Well, if the function he is doing is an indirect participation in the public offering --

MR. SEGAL: Did the witness say "if"?

THE WITNESS: No, I did not.

THE COURT: Go ahead, Mrs. Appleton.

THE WITNESS: -- this would be part of an indirect participation in a public offering, which under the broad definition of an underwriter, he would be an underwriter.

Q In your opinion, Mrs. Appleton, if a broker-dealer acquires stock in a public offering from the issuer and places those shares in the broker-dealer's trading accounts and then the broker-dealer resells the shares, is that broker-dealer an underwriter with respect to that public offering?

MR. SEGAL: Objection.

THE COURT: Just a moment, please.

Mr. Reporter, let me have that last question.

(Question read.)

THE COURT: Would that set of facts make the broker-dealer an underwriter in connection with that public offering?

The objection is overruled.

THE WITNESS: Yes.

MR. SEGAL: I object further and ask that answer be stricken, because there are no number of shares designated in that hypothetical.

THE COURT: Fine.

Would the number of shares make a difference in the answer you just gave?

THE WITNESS: Not in my opinion.

THE COURT: If he took one share or a thousand, would there be a difference?

THE WITNESS: If it is all part and parcel of the public offering, he is a conduit in the distribution of the securities.

MR. ROBSON: If your Honor please, you know I have strong enough objections to this testimony generally, but I think that if the witness is asked a question based on specific facts, the witness' answer must be limited to those facts and she should not be allowed to add more facts, because at that point I have no idea what her opinion is based on for purposes of cross-examining her.

THE COURT: All right. I think that is a valid objection.

I will direct that the last question asked by the Court and the answer of the witness be stricken and

disregarded by the jury, in view of the objection of counsel.

You may inquire further, Mr. Schatten.

Q In your opinion, Mrs. Appleton, if a broker-dealer obtained shares in a public offering from the issuer and placed those shares in one of its customer accounts, is that broker-dealer an underwriter with respect to that public offering?

A Yes.

Q In your opinion, Mrs. Appleton, if a broker-dealer takes stock in a public offering from the issuer and transfers those shares to a third party and charges the third party a commission, is that broker-dealer an underwriter with respect to that public offering?

A Yes.

MR. SEGAL: Your Honor, I object to this entire line.

THE COURT: Well, the witness has answered the question and the jury has heard it. I will let the answer stand.

Mrs. Appleton, on the next question, if any of the counsel rise, would you withhold your answer until they have had a chance to address the Court?

THE WITNESS: I'm sorry.

MR. SCHATTEN: I have no further questions, your Honor.

THE COURT: Mr. Block, you may inquire.

CROSS-EXAMINATION

BY MR. BLOCK:

Q You have been, you testified, in your present position since September of 1972, Mrs. Appleton.

A That's right.

Q And, as I understand it, you are in charge of the section at SEC headquarters in Washington having to do with Regulation A offerings.

A That's right.

Q Prior to September of 1972, were you in the same position?

A No.

Q What section were you in prior to 1972?

A I was chief of the Section of Small Issues in the Washington regional office of the Commission, which is located in Virginia.

Q Essentially, you were doing the same work?

A Yes, but on a regional office level.

THE COURT: Now you have national authority?

THE WITNESS: Yes.

Q How long had you been doing that work prior to

September of 1972 in the regional office?

A I held that position --

Q Roughly.

A About twelve, fifteen years.

Q Mrs. Appleton, you of course have conferred with the United States Attorney's Office in connection with your testimony in this case, isn't that correct?

A Yes.

Q Have they called to your attention the fact that what we are concerned with here is a public offering on behalf of Richard Packing Company back in March of 1969?

A Yes.

Q Have you been over those papers?

A I have glanced over them, yes.

Q So you have some familiarity, then, with this Richard Packing Company public offering of March 11, 1969; right?

A Yes.

Now, you were not anywhere near the Chicago regional office in 1969, were you?

A No, I was not.

Q You were doing your job in the Washington regional office at that time?

A That's right.

Q Richard Packing Company, the company with which we are concerned here, had its principal place of business in Minneapolis, Minnesota. That is a fact; you can take that from me.

The regional office for Minnesota at that time was Chicago, Illinois; isn't that correct?

A That's correct.

Q Now, I would like to show you the papers of Richard Packing Company. That is Exhibit 5 (handing).

THE COURT: Incidentally, could you tell us by looking at that folder, since you are with the Commission, what that folder actually is in the Commission's own parlance? That is, Exhibit 5.

THE WITNESS: This is the docket that contains the entire filing under Regulation A, including exhibits.

Can I explain exactly what this --

THE COURT: No, leave it at that. If Mr. Block wants to inquire further, I don't want to preempt him.

We have seen that and I just wanted to know from someone with the Commission what it was.

One other question: Is that kept in the normal course of business in the regional office of the Commission, or is that a docket that comes from Washington?

THE WITNESS: This is the original, and

Regulation A filings are filed in quadruplicate. The oroginal document is sent to the main office of the Commission, where it is kept.

THE COURT: And the file there is from the main office of the Commission.

THE WITNESS: Right. This is an original.

Q From your having gone over the papers in Exhibit 5, this was a regular Regulation A offering? In other words, the papers you talked about are in the file, a notification on Form 1-A is in there -- and you can check anything I say by looking at the --

A I have not gone over the file itself. I have seen the offering circular, but I have not gone over the entire file.

Q Would you glance at it now? You do find there was a Form 1-A?

A Yes.

Q Do you notice in going through there that that was amended, I think there were some three amendments to that. I don't care whether there were three or not, but there were amendments --

A I notice it has been amended, yes.

Q And those amendments occur as a result of comments and suggestions from the regional office which is

THE COURT: Why don't we start out with this: In the normal course of events, am I correct that these offering circulars are prepared under the supervision of attorneys?

THE WITNESS: Normally. Not always.

THE COURT: But normally?

THE WITNESS: Right.

THE COURT: Very well.

Mr. Block, you may inquire in this area. I think it's valid and proper.

MR. BLOCK: Thank you.

Q Would you agree that the preparation of offering circulars and the preparation of other papers in connection with public offerings is a specialty, pretty much, in the legal profession; isn't that true?

A I like to think it is.

Q Yes. Well, it is, isn't it?

A Yes.

Q On the basis of your experience, you would not expect a business man who was at the time the president of a company engaged in making hamburger patties to be familiar with the various interpretations of the intricacies of the Securities Laws, would you?

A No, I would not.

Q You would expect him, would you not, to rely on the knowhow and such expertise as his lawyer or the lawyer for the company would have; isn't that correct?

A Well, certainly the lawyer is cooperating with his client, and --

Q No, I am talking now on the area of interpretation. Remember, I'm not talking now about the facts that go in. I am talking about the interpretation of the various provisions of the statute and the regulations.

A I would say he would rely on him.

Q Right.

Do you happen, as a result of your experience, to be familiar with the law firm of Feinberg, Mirvis, Shumacher and Malmon of Minneapolis, Minnesota? Did you ever hear of that law firm?

A Only in connection with this offering circular.

Q And you don't know whether or not Mr. Alvin Malmon of that law firm was a specialist in securities matters or not; you just never heard of him prior to looking at this file. Is that correct?

A That's right.

Q I'd like you to turn to the offering circular, the last page prior to the financials; and you see there this language.

securities dealers are employed, the company's notification statement and offering circular will promptly be amended to furnish additional information.

"In the event that the entire offering is sold through securities dealers the procees from the sale of this issue before deduction of expenses will be approximately $290,000. However, to the extent that no dealer concessions are paid, the proceeds to the company will be increased."

I would like you to assume that there came a time when the lawyer for the company learned that a broker-dealer by the name of Kelly, Andrews & Bradley had participated in the offering, I'd like you to assume that.

Wouldn't you say, in light of the statements in the offering circular, it was the responsibility of that lawyer to either amend the offering circular or disclose that in the 2A that he subsequently filed?

A Well, I would say it's the responsibility of the lawyer to advise his client, but it is the responsibility of the company to make whatever amendments are necessary.

Q I know, but doesn't the company rely, as you said before, on the knowledge and expertise of the lawyer?

A Usually.

Q And you don't know that that wasn't done in this

case? You don't have any personal knowledge about this?

A No.

Q So isn't the answer to my question yes, that essentially it was the lawyer's responsibility, if he knew the facts; isn't that right?

A He certainly should have brought it to the attention of his client.

Q All right. I will accept that. Let me ask you this:

If he brought it to the attention of the client, shouldn't he have recommended to the client that this should have been set forth and brought to the attention of the SEC?

A I'm sorry, I lost you someplace.

Q Let's go back. We are assuming that the lawyer knew that Kelly, Andrews & Bradley had participated in the offering and you said it was his responsibility to have at the very least, to bring it to the attention of his client, isn't that right?

A Yes, that's right.

Q And wasn't it further his responsibility to inform the client, "Look, this has to be disclosed to the SEC;" isn't that right?

A I would say that is his responsibility.

Q Right. Let's deal with the 2A. It's customary, is it not, for the client to sign the 2A, isn't that right?

A Yes.

Q Can you refer to the 2A in this case, I think you will find it in there.

(Pause.)

A Yes.

Q And if I were to tell you to assume that Milton J. Cohen is the client here, the President of the issuing company, Richard Packing Company, you find the signature there? Right?

A Yes.

Q But this again, is it not, is a form like the offering circular on which a client is entitled to rely on the knowledge and expertise of his securities lawyer, isn't that right?

A (No response.)

Q At least for the interpretation of legal matters, not for the facts?

A From the standpoint of interpretation and assuming the lawyer has the expertise. Not all lawyers, I find, have that expertise.

Q You say not all lawyers?

A Right.

Q Right. I'm sure that is so.

So you're saying that when it comes to a question ofinterpretation, the client has a right to rely on his lawyer, right?

A Yes.

Q Because isn't it true that there are lawyers who don't have expertise but they don't bother to tell that to the client, that the clients think they have expertise when in fact they don't, isn't that true?

A I'm sure that happens --

MR. SCHATTEN: I object, your Honor.

THE COURT: Sustained. Strike it.

The jury will disregard the last question and answer.

Q Where it says on the second page of the 2A, and there is question 10, and it reads:

"List the name s and addresses of all brokers and dealers who have knowledge of the issuer or underwriters participated in the distribution of the securities offered during the period covered by this report" and the answer is "None."

Wouldn't you say that that answer, in the absence of any other facts that I might give you, represents an interpretation by the lawyer of the securities

laws and regulations?

A No, I would not. I think this is a question of fact.

Q I asked you to assume before that the lawyer knew that Kelly, Andrews & Bradley participated in the offering, so would you say that the lawyer should have put that name, Kelly, Andrews & Bradley, down in answer to that question?

A If the lawyer prepared this form, that doesn't always happen.

Q Well, the testimony here -- I'm asking you to assume that the lawyer prepared the form.

A Okay.

Q Then he should have put down Kelly, Andrews & Bradley in answer to 10, isn't that right?

MR. SCHATTEN: I object, your Honor.

Q In your opinion.

MR. SCHATTEN: I object, your Honor. There is testimony here that the client also looked at this form.

THE COURT: That is not the point. Whether the client may have given some supplementary instructions to the lawyer is not the problem at hand. I am going to let the witness answer Mr. Block's question, if she can. Do you have the question in mind, Mrs. Appleton?

THE WITNESS: I'd like it repeated.

MR. BLOCK: I will rephrase it.

THE COURT: Very well.

Q I am asking you to assume that the company counsel prepared that form, that the company counsel knew that Kelly, Andrews & Bradley participated in the offering, and I am asking you, then, wasn't it the lawyer's responsibility to put down Kelly, Andrews & Bradley in answer to 10 on the 2A, rather than the word "None"?

A I think it was his responsibility to bring it to the attention of his client and discuss it with him, after all, it is the client that is going to sign the document. It is his document.

Q But if is the fact, it should have been reported, isn't that right?

A Yes.

Q You have used the term material omission, or material. Do you mean, by material, something that would affect the situation of an investor as to whether or not to subscribe to a particular issue of stock? That is the test, isn't it?

A Yes.

Q Of materiality?

A Yes.

Q And you are engaged in the kind of work which of necessity puts you in constant contact with balance sheets of various companies?

A That's right.

Q And yet, you are not, you say, an expert on balance sheets or interpreting balance sheets?

A That's right.

Q The interpretation of balance sheets is a fairly sophisticated and esoteric area, is it not?

A I would say so.

Q In fact, the ability to interpret balance sheets is one of the great gifts of successful business men?

A I don't think that is impossible, for a layman to interpret a balanac sheet.

Q But it's extremely difficult?

A It depends on the balance sheet. If it's complicated, if it's a General Motors balance sheet, that might be more difficult than reading a balance sheet of a company that hasn't been a business but a few months.

Q Also a balance sheet can list items which either do or do not give an accurate picture to the public?

A When you say "can" --

Q Yes.

A I suppose they could. However, I would say that

this could be misleading, yes.

Q In other words, again -- and the last question is that a balance sheet is normally included as part of the offering circular or the prospectus?

A Offering circular. I am assuming we are still talking about Regulation A.

Q Very well, then; leave it at the offering circular.

A All right.

Q So there is no confusion, when we are talking about offering circular, that applies to the Reg A.

A That's right.

Q When we talk about prospectus, that refers to a full registration, an S-1.

A That's right.

Q In an offering circular, which is the document that is evolved in a Reg A offering, that does contain a balance sheet?

A It depends on how long the company has been in business. Assuming the company has been in business for over a year, then the conventional balance sheet is required to be in the offering circular. If it's less than a year, then it's an entirely different financial statement.

Q This balance sheet, if it is in the Reg A, is

is dealing with. Maybe he may not know anything about the underwriter, but he can find out.

Q The underwriter also indicates something else, does he not? Didn't you say something about the fact that he might help the after market?

A That's right.

Q In other words, the underwriter has some kind of obligation, or at least he holds himself out to, to become sort of a marketplace for the future purchase and sale of stock after the offering is completed?

A Right.

Q And you want to know whether or not there is somebody going to be around helping to support the market?

A That's right.

Q And by support of the market we are not talking about anything that is illegal or improper, are we?

A No.

Q Can you tell us what support of the market implies?

A Well, some brokers after an offering is completed make a market in the securities; in other words, they will buy securities for trading purposes. They will

often buy securities into their own accounts?

A Yes.

Q Will they often buy securities into their own accounts in order to keep the price at a regular level?

A Yes.

Q And that is proper, isn't it?

A Yes.

Q And by their buying securities, doesthat have a tendency sometimes to cause the stock to rise?

A Well, it could, and it doesn't necessarily have to.

Q But it could?

A Yes.

Q So that if you or I know that there is somebody who is going to buy our stock, it is possible that by selling it to him, other people may feel that by his being available for that purchase, that stock has some value and maybe the stoc k will go up in price.

A Of course it's all based on supply and demand.

Q And it is the work of the underwriter to help that process of supply and demand?

A Yes.

Q If someone who was not an underwriter listed himself as an underwriter, wouldn't that be misleading?

A If he is not in fact an underwriter?

Q That's correct.

A Yes.

Q So that if an individual was doing nothing more than billing out but was actually not going to support that market at a later time and he listed himself as an underwriter, that would be a false and misleading statement, would it not?

A Well --

Q Would it not, Mrs. Appleton, please?

THE COURT: If you can answer the question yes or no, you may answer it. If you can't, you will tell Mr. Segal you can't answer it yes or no.

THE WITNESS: I can't answer it yes or no because it depends on the facts.

Q The facts are as I gave them to you. If he were doing nothing but billing stock out and he held himself out -- that is, he was doing nothing but what that five year old boy was doing and he held himself out as an

THE WITNESS: No.

THE COURT: Would you finish your answer to Mr. Segal's question, please.

A As I said, we are talking generally now. This is one of the factors the investor may be concerned with, but not all brokers or underwriters that participate in an offering are market makers or making a market for the securities after it is completed.

My answer was really related to the general situation.

Q Then are you saying that if you do list yourself as an underwriter and if you are an uninitiated investor, it is possible that you could still be misleading investors, couldn't you?

A If you're listed as an underwriter --

Q And you have no intention of supporting the after market, could you be misleading the public?

A The public may misunderstand it, yes.

Q So that whether you're listed or you're unlisted, it is possible to mislead, is that right?

A Depending on the function.

Q And it is depending on the after decision of the SEC or the U.S. Attorney's office, is that right?

MR. SCHATTEN: I object, your Honor.

for which it receives a commission and remits the balance to the client is an underwriter?

A The client being the company?

Q Yes.

A Yes.

Q That is the standard, obvious case which we all agree with and which is what is the usual situation; is that correct?

A That's right.

Q Do you agree that in between those two points, the one who is clearly not an underwriter and the one who clearly is an underwriter, that there is a whole range of situations which are questionable and which, depending on who you are, may or may not be deemed an underwriter?

A I wouldn't say it is depending on who you are; it is what function you are performing.

Q Or what your opinion is of the Securities Laws, as an attorney or anybody else?

A Yes.

Q Incidentally, we keep talking about underwriter and a definition.

Where does the definition of an underwriter come from?

A It is in the Securities Act of 1933, Section 211.

t6am

el 1

Appleton-cross

1769

Q And if I as a layman who had a company that wanted to issue stock wanted to find out whether somebody was or was not an underwriter, that is the definition I'd have to go to?

A Well, it's a very broad definition.

Q It's a very broad definition which must be interpreted for each specific situation.

A That's right.

Q In other words, the boy delivering the stock we agreed although technically he may be covered by that broad definition, we all agree he is not an underwriter?

A Well, he's preforming a very ministerial function and I certainly wouldn't put him in the category of an underwriter.

Q But the statute doesn't say any thing about ministerial functions.

A No.

Q It says anybody who participates directly or indirectly.

A That's right.

Q But the court and the SEC and lawyers interpret that complicated statute, do they not?

A Yes.

Q This 5 year old boy, let's take him up to 43 years

Q. Let's assume that he delivers not one share, but a thousand shares, and let's assume he picks up the check when he delivers it. Is he an underwriter?

A. Well, I can't answer your question --

Q. Just those two facts. That is the only two facts I am asking you to assume.

He delivers a certificate and he takes a check. Is he an underwriter?

A. I can't answer your question yes or no unless I know in what context he is delivering that.

Q. The company is selling some stock and they ask him to deliver the stock certificate and get a check; tell him where to deliver the certificate to and from whom to get the check.

A. If he is merely delivering the certificate, he is not an underwriter.

Q. Those, then, are the only facts I am asking you to assume. That the company is selling the stock; they give the man the certificate and say, please deliver this and get us a check; is he an underwriter?

A. In the very narrow factual situation that you are giving me, I would say no.

Q. Okay. Now they say, here's a stock certificate and an offering circular; deliver that and get me a check.

Is he not an underwriter?

A In the same narrow factual situation, no.

Q Now they say to him, I don't want you to deliver the stock certificate and the offering circular physically, would you please do me a favor and mail it for me and get the check in the mail and then send it to me when you get it.

Is he an underwriter?

A If that's all he is doing, no.

Q You were asked some questions earlier on direct examination about offerings of stock where the stock is being traded and you said that in those cases it was customary for the stock to be offered at the market price; is that correct?

A Yes. It's not customary. It's done.

Q It is done instead of at a fixed price?

A That's right.

Q But as a practical matter, say that stock is selling at $10 a share on the open market, the company can't possibly sell it privately in a new offering for $10 a share very practically; is that correct?

A That's right.

Q How do you determine the market price on a particular day of an over the counter stock which is traded by several brokers?

A Well, it's usually somewhere in between. In

ve you ever seen the process in operation?

ot from their standpoint, no.

. ROBSON: I object to the question.

COURT: Have you attended the seminars that we
ve been discussing about which are presented for the
ification of the Bar?

WITNESS: I have not only attended them, but
have participated.

COURT: And have any of these seminars that
you have attended covered the subject matter which is pre-
sently before you in the last question asked by Mr. Schatten?

WITNESS: In the sense that we would have a
discussion or a question and answer period or it would be part
of my lecture, as to the care that should be taken in pre-
paring an offering circular.

COURT: You may inquire, Mr. Schatten.

BY MR. SCHATTEN:

Q In an offering circular where there is a proposed
future operations section, who generally supplies that in-
formation, the company's lawyer or is it the
officers of the company?

MR. SEGAL: I am going to object unless it is
brought out the facts of this case.

COURT: Gentlemen, if you had restricted your

cross examination to the facts of this case, there would be no problem. But I must suggest that I heard assumptions in numerous areas, and now to stand up on redirect examination and make this objection, I think it's not well taken, and under the circumstances I will permit the witness to anwer the question.

The weight of the answer will be a matter for the jury. They may give the answer little weight; they may give the answer no weight; but the weight is up to the jurors in their determination of the facts of this case.

MR. BENSON: If your Honor please, I would like only to note that the assumptions that were raised by counsel on cross examination in their questions were only because assumptions were permitted over objections by this witness on direct. We did not open the door. The door had been opened and we had no alternative.

THE COURT: This is redirect examination and I think it is proper. I have ruled. You may inquire, Mr. Schatten.

Q In an offering circular where there is a proposed fiscal operations section, who generally supplies the information contained therein? Is that supplied by the officials of the company or by the company's lawyers?

MR. SEGAL: Or both, your Honor. She should be given all alternatives.

MR. SCHATTEN: Your Honor, may I be heard on this?

THE COURT: No. The jury can draw its own conclusions if evidence is subsequently presented to it.

Mr. Robson talked about attorneys having questions about what the securities laws means. I want you to assume that the facts are the following:

Let's assume that there is a Regulation A public offering of 10,000 shares; I want you to furhter assume that a brokerage firm is receiving all of those 10,000 shares; I want you to further assume that 2,000 of those shares are placed in that brokerage firm's trading account; I want you to further assume that 5,000 shares of those 10,000 shares are sold for a commission. I want you to further assume that the remaining 3,000 shares are sold to customers for commissions.

I am going to ask you, do you have any doubt that that brokerage firm is acting as an underwriter?

MR. SIGAL: Objection.

THE COURT: I don't care for the form of the question. Perhaps you can rephrase it, and you can ask it. With "do you have any doubt" is in my judgment inappropriate phrasing.

I'd like you to assume, Mrs. Appleton, that 10,000 shares are issued in a Regulation A. I would like to have

you assume that all 10,000 shares are handled by a brokerage firm; 2,000 of those shares are going into the brokerage firm's firm trading account; 5,000 of those shares are being sold for commission, and the final 3,000 are being sold to customers for commissions.

I would like to first ask you, in your opinion would that brokerage firm be an underwriter?

MR. SEGAL: Objection.

THE COURT: Overruled.

A. Yes.

MR. SEGAL: I would like to reiterate the objection made at the side bar with regard to this area.

THE COURT: You made your objection. I have overruled it. The witness has answered the question. The weight the jury will give to that answer is solely and completely up to the jury.

Q. In your opinion, would there be dispute among securities lawyers about your conclusion?

A. I doubt it..

MR. SEGAL: Your Honor, I would object to that.

THE COURT: Why didn't you stand up sooner, Counsel?

MR. SEGAL: Because that witness comes out like a trigger.

THE COURT: No; let the record reflect that

other business and they may be directors in other businesses and they just attend directors' meetings and don't really get that involved in the operations of the company.

Q If I were to ask you to assume that Mr. Malmon, who was counsel, SEC counsel to the company, Richard Packing, here in this particular Regulation A, was a director at the time of the company, you sitting there have no knowledge as to his knowledge of the actual facts regarding the company? You don't know anything about it one way or the other, do you?

A No.

Q And my last question of you, ma'am, is, wouldn't you agree that the determination in a particular set of circumstances as to who is an underwriter is a question of law for decision and determination by counsel for the issuer? You have to agree with that, do you not?

A I would say it is a question of fact.

Q Put it this way, it is a question to be determined by counsel? It is not a question to be determined by a layman? I am distinguishing between a layman and a lawyer. Wouldn't you agree with me that the question of who is an underwriter is one for a lawyer and not a maker of hamburger patties? Right?

A Yes, I would say, generally speaking, that would

be true.

MR. BLOCK: I have no further questions.

7/7 7b

1 Trench Appleton-recross

2 THE COURT: Very well, you may step down.

3 MR. SEGAL: Your Honor, may I --

4 THE COURT: You wish to inquire, sir?

5 MR. SEGAL: Very shortly, your Honor.

6 THE COURT: You may.

7 RECROSS-EXAMINATION

8 BY MR. SEGAL:

9 Q You indicated that an underwriter is sometimes
10 paid from proceeds and it can be in the form of
11 warrants, options, bonus shares, cash or warrants --

12 THE COURT: Was that asked on redirect examination?

13 MR. SCHATTEN: No, your Honor.

14 THE COURT: I don't recall it.

15 This is recross. Ask your next question, please,
16 anything that was covered on redirect or by Mr. Robson
17 or by Mr. Block --

18 Q Do you, Mrs. Appleton, have any knowledge of how
19 it is that any of the facts got into the offering circular
20 with regard to Richard Packing?

21 A No.

22 MR. SEGAL: No further questions.

23 THE COURT: Very well.

24 MR. ROBSON: Just one question, your Honor.

25 THE COURT: Of course, Mr. Robson.

*****

in this. It is my hope that by the discussions we have had and the understandings we have reached that we will be able to present the case in perhaps even a clearer form and to have matters appropriately to be before you placed before you in a way you can see and hear so that you can decide and render a fair and just verdict in the case.

You may call your next witness, Mr. Feffer.

MR. FEFFER: Thank you, your Honor. The government calls Jack Hurley.

J O H N R. H U R L E Y, called as a witness on behalf of the government, being first duly sworn, testified as follows:

MR. FEFFER: May I inquire, your Honor?

THE COURT: You may, Mr. Feffer.

DIRECT EXAMINATION

BY MR. FEFFER:

Q Mr. Hurley, I am going to ask you to keep your voice up. There is a microphone in front of you that you can use.

How are you presently employed?

A I do some freelance writing and I am employed by Cormarco, Incorporated.

bmv 12 Hurley-direct

Q I am going to have to ask you to bring the microphone closer to you and speak into it.

What is Cormarco, Incorporated?

A It is a computer software firm, provides computer services.

Q What do you do for Cormarco?

A I am the systems analsyt.

Q What does a systems analyst do?

A I try to apply computers to various customer's problems. In this case, it is the U.S. Navy and missiles.

Q I believe you testified that you do some writing. What type of writing do you do?

A I write both fiction and non-fiction for magazines and I have written a novel which is looking for a publisher now.

Q How long have you been with Cormarco Company?

A Since February of this year.

Q Is that in California?

A Yes.

Q Prior to February of 1974, where were you employed?

A I was doing some writing on my own, doing computer studies for Bob Clark, in San Francisco.

Q What type of computer studies?

A Statistical studies.

Q I am going to direct your attention now back to 1966. How were you employed in 1966?

A I was a systems engineer for IBM Corporation.

Q Where was that?

A Denver, Colorado.

Q How long had you been with IBM at that point?

A Five years.

Q In 1966 what were you doing for IBM?

A I was assigned to work with Financial Programs, which was a mutual fund company in Denver and we were trying to forecast the future course of the economy and, possibly, of the stock market. It was a computer solution to their problems.

Q Did there come a time, Mr. Hurley, when you left IBM?

A February of '67.

Q Where did you go from there?

A I went to work for Financial Programs.

Q What was your position in February of 1967 with Financial Programs?

A My title was Econometrician, which means I used a computer to work on economics for the company.

Q I think you'd better keep your voice up just a little bit, Mr. Hurley.

MR. SEGAL: Your Honor, I didn't get that first word.

THE COURT: Let me have that read back. You mean econometrician?

MR. SEGAL: Yes.

Q What is an econometrician?

A A statistician that works with economic data. That is not any clearer, probably.

Q Did there come a time when your position at the fund changed?

A A year later, and when I switched from strictly computer work and became a securities analyst.

Q This would be sometime during 1968?

A Yes.

Q What were your responsibilities with Financial Programs as an analyst?

A Well, I covered several industry groups, natural gas, broadcasting, railroads, and computer programming

2 Fmach Hurley direct

companies.

Q How long did you remain as an analyst for Financial Programs?

A About a year.

Q This would be up to and including what date, approximately?

A Roughly, January of '69.

Q Did you know a man named Mr. Eric Borgan?

A Yes, I did.

Q Who was Mr. Borgan?

A He was a portfolio manager and vice-president of Financial Programs.

Q When did he leave Financial Programs?

A About that time.

Q What time was that?

A Tail end of '68 or beginning of 69.

Q Do you know a Bob Smith?

A Yes.

Q Who was Bob Smith?

A Same thing. He was a vice-president and a portfolio manager at Financial Programs.

Q When did he leave Financial Programs?

A About the same time.

Q End of '68?

A Yes.

Q Do you know a Bob Brown?

A Yes. He was my boss.

Q What was Mr. Brown's position?

A Director of investment research.

Q When did he leave Financial Programs?

A That same time.

Q Do you know a Fred Meyer?

MR. SEGAL: I am going to object to this delineation unless there is some relevance --

MR. FEFFER: There is, your Honor.

THE COURT: I will take the Government's representation there is something here. I didn't see it, either, at the moment, Mr. Segal, but I accept Mr. Feffer's representation.

MR. SEGAL: Your Honor, that last name?

MR. FEFFER: Fred Meyer.

THE WITNESS: Meyers.

Q What did Mr. Meyers do for Financial Programs?

A He was Mr. Brown's boss and he was director of investment.

Q When did he leave Financial Programs?

A About that same time.

Q The end of '68?

A Yes.

Q Do you know a Mr. Milias?

A Yes.

Q How is that spelled?

A M-i-l-i-a-s.

Q What was Mr. Milias' position at Financial Programs?

A He was a portfolio manager, he was a vice-president, and he left at about that same time.

Q Do you know a Mr. Ed Fischer?

A Yes, sir.

Q What was Mr. Fischer's position with the fund?

A Vice-president, portfolio manager, and he managed the income fund.

Q When did Mr. Fischer leave Financial Programs?

A Roughly about that same time.

Q End of '68?

A Beginning of '69, I believe.

Q Do you know a John Decker?

A Yes.

Q What was Mr. Decker's position with Financial Programs?

A He was a securities analyst.

Q When did Mr. Decker leave Financial Programs?

A About that same time.

Q Do you know a Mr. Barrish? B-a-r-r-i-s-h?

A What was it?

A Barrish.

A Mike Barrish was portfolio manager.

Q When did he leave Financial Programs?

A About that same time.

Q Do you know a Dick Lubby? L-u-b-b-y?

A Yes.

Q What was his position at Financial Programs?

A Securities analyst.

Q When did he leave Financial Programs.

A Roughly the same time.

Q Did there come a time, Mr. Hurley, when you were appointed or promoted to a fund manager at Financial Programs?

A Yes.

Q When was this?

A Beginning of '69.

THE COURT: That is about the time all these gentlemen you just described were leaving?

THE WITNESS: There was quite a shakeup, yes.

Q What were your responsibilities to be as a fund manager?

A I would have overall cognizance or responsibility for Financial Venture Fund, which was the new fund that was about to be sold to the public, and I would have 75 percent of the responsibility for making the investments for that fund.

Q What type of fund was Financial Venture Fund?

A It could invest in any stocks, any securities, but it was chartered to concentrate on unseasoned companies and what was called venturesome investments.

Q How much money did Financial Venture Fund have to invest at that time?

A In January?

Q How much money was it chartered with to invest?

A It was sold ultimately, in March of that year -- $50 million were sold and the resulting monies to the fund were $45 million.

Q Prior to the time that you were appointed the portfolio manager of Financial Venture Fund, did you have any prior experience in the investment field?

MR. SEGAL: Objection.

THE COURT: Well, he has indicated certain things. Would you describe what, if any, experience you had in the financial investment field other than what you have told us about so far?

THE WITNESS: Well, I worked at the fund for two years before becoming a fund manager and I was around the people working there.

One of those years I had been a securities analyst covering the groups that I mentioned.

Q Did you have any prior experience yourself in investing money for other people than yourself?

A No.

Q Do you know a Bob Anton?

A Yes.

Q Who was Bob Anton?

A He and I worked together at IBM and he joined Financial Programs shortly after I did, in '67.

Q Did he become a portfolio manager of one of the funds at Financial Programs?

A Yes, he did.

Q When was that?

A That would be in, probably, January of '69.

Q Did that follow the shakeup that you referred to?

A Yes, it did.

Q Do you know a James Frankenthaler?

A Yes.

Q Who was he?

A He was at Financial Programs at the same time and

he was the manager of the large[illegible] of the largest fund that was managed in Denver.

Q Which fund was that?

A Financial Industrial Fund.

Q What date did the Financial Venture Fund -- that is the fund that you were the portfolio manager for -- on what date did that fund become effective, approximately, if you recall?

A Middle of March, March 10, 1969.

Q Prior to that effective date, what, if anything, did you do with respect to the business of that fund?

A Well, I was trying to get in order a list of stocks that it would invest in, since it owned nothing and would be getting all cash, and I would need to invest in stocks, and I was trying to put together a list of what I would invest in.

Q Do you know a man named Hugh Deane?

A Yes.

Q Who was he?

A He was a stock broker.

Q Did you have an occasion to meet with Mr. Deane in late 1968 in Denver?

A Yes.

Q Where did this meeting take place?

A At the offices of Financial Programs.

Q Was Mr. Anton present at this meeting, as well?

A Yes.

MR. SEGAL: Your Honor, could we have a date from this witness?

THE COURT: To the best of your recollection, when did this meeting take place?

THE WITNESS: Winter of '68, or January of '69 -- sometime in that range.

Q Can you tell the Court and jury what Mr. Deane said to you during this meeting that you referred to, and what you said to him?

MR. SEGAL: Objection, and subject to connection, your Honor.

THE COURT: We have Mr. Deane present, we have Mr. Anton present, and the witness present.

It will be received subject to connection as to all three of the defendants here on trial.

Q Go ahead, Mr. Hurley.

What did Mr. Deane say to you at this meeting?

A He had come out bringing information about the merger of two companies, and we discussed that, and in the course of that he mentioned several other companies, including Richard Packing.

Q What did Mr. Deane tell you about Richard Packing at that time?

A Well, he said that it was currently a meat packing company in the Minneapolis area that was expanding into the fast-food field. He characterized it as a McDonald's operation with some bonuses to it, namely, it would have sit-down seating and would be built around a circus motif in the decorations and that it could have very good earnings growth, and that he thought it was a good situation, good stock.

MR. BLOCK: Could I have that answer read, your Honor?

THE COURT: Yes, indeed.

(Answer read.)

Q What else, if anything, did Mr. Deane say at that meeting, Mr. Burley?

A Well, when I asked him about some details on the company, he was fuzzy on the details, and he said that some other people were more closely knowledgeable about it, and he mentioned Mr. Deutsch and the company of Jaffee & Company, which was a stock broker.

Q What, if anything, did he say with respect to Mr. Deutsch and Jaffee & Company?

A Well, he said that they were a brokerage house

that was creative in their approach, that they worked with situations that were interesting, and that they could move stocks and could get behind companies and make them successful investments.

Q What did you say, if anything?

A Well, I said, "Fine," this was the kind of company that Venture Fund was looking for -- I mean Richard Packing was -- and that I would like to meet the people who were more knowledgeable about it and go into it.

Q In January of 1969 did you have an occasion to meet Mr. Deutsch?

A Yes, sir.

MR. SEGAL: Objection, your Honor, as to any leading.

THE COURT: All right. It is in and I am going to leave it.

There did come a time when you met Mr. Deutsch for the first time?

THE WITNESS: Yes, sir.

THE COURT: Do you recall the date?

THE WITNESS: It was in that December-January period of '68-'69.

THE COURT: And where?

THE WITNESS: In Denver.

THE COURT: Did he come to Denver?

THE WITNESS: Yes, he did.

Q Did you have occasion to meet with him at that time?

A Yes, I did.

Q Where did this meeting take place?

A In the offices of Financial Programs.

Q Was Mr. Anton also present at this time?

A Yes.

Q Can you tell the Court and jury what Mr. Deutsch said to you during the course of this meeting and what you, in turn, said to him?

MR. BLOCK: This is subject to connection as to Mr. Cohen, your Honor.

THE COURT: And Mr. Duboff, as well, since he doesn't appear to have been at the meeting.

A Well, he told us about Jaffee & Company and mentioned some of the situations that the brokerage house had been involved in. He said that -- [illegible] he mentioned Leasco Data Processing and generally told us about Jaffee's capabilities and his own, and that he was interested in the smaller situations which could grow into larger companies.

He talked about Richard Packing, also.

Q What did he say about Richard Packing, if you can recall, at that time?

A He gave earnings projections, and this is a statement of what a company could earn, and he said that as of June of '69, which would be about five months or so after we were talking, the company would earn 40¢ a share and then in the following year it would be earning at a $3 rate, and the year after that a rate somewhere from $5 to $7 per share.

Q Was Mr. Anton present at this time during this portion of the conversation?

A No.

Q Continue. What else did Mr. Deutsch say about Richard Packing?

A Well, he said the same thing that Hugh Deane had said, about it being a fast-food company and he mentioned that they also would build dune buggies, which are sports type cars, and that there would be -- that the main earnings power of the company would come from restaurants that would be built, which were to be called Circus Wagons, which was the motif of the restaurant, and that 60 of these would be built by 1970, that they would be built by franchisees, people who had purchased franchises from the company.

MR. SEGAL: I'm sorry, your Honor. I didn't get the last piece of that answer.

THE COURT: Let me have the reporter read it back, please.

(Answer read.

Q I want to show you what has been marked as Government's Exhibit 33 for identification and ask you to look at it and to identify it generally, if you can.

Can you describe what that is for the Court and jury?

A It's the recommendation information sheet I filled out at the time of that meeting with Mr. Deutsch.

Q The information contained on this sheet came from whom?

A From him.

Q Mr. Deutsch?

A Yes.

MR. PEPPER: The Government offers 33.

MR. BLOCK: I assume your Honor will admit it except subject to connection as far as Mr. Cohen is concerned?

THE COURT: That would be my disposition, unless you have some cogent objection?

MR. SEGAL: May I have a voir dire, your Honor?

THE COURT: Yes.

VOIR DIRE EXAMINATION

BY MR. SEGAL:

Q Mr. Hurley, you indicated that this was made -- this 33 for identification was made as a result of your meeting in December or January of 1969.

A As best I recall it, yes.

Q I take it it was not made in January of 1969, was it?

A The date on it says February of '69.

Q So this is not a contemporaneous document with the meeting that you have just testified to, is it?

A Well, it might be a transcription of notes I took there, or whatever, but, to the best of my knowledge, that is what I was told in that meeting.

Q Did you take notes at the meeting in January?

A Which meeting?

Q The meeting you just testified to, in December of '68 or January of '69, at which time Mr. Deutsch was supposed to have come to Denver --

A Yes.

Or it could have been February, and those are the notes from the meeting.

Q Then your testimony is not that the meeting was

'6 rmmch Hurley-

in January, it could have been in February?

A It could have been December, January or February, in that time span.

Q When when was it, to your best recollection, that these notes were made?

A February 1, 1969.

Q Do you know whether or not these notes are based upon other notes that you had, or whether what appears on this document was made at the time of the meeting?

A I believe everything in the document was made at the time of the meeting, except the marginal little thing, and that could have been added at some later time.

nd of 1-C

Q Mr. Hurley, I believe you testified that the Financial Venture Fund became effective approximately March 10, 1969; is that correct?

A Yes.

Q Did you have an occasion to speak with Mr. Deutsch prior to the effective date?

A Yes, I did.

Q And do you recall approximately when that telephone conversation occurred?

A It would be sometime in February or early March.

Q The latter part of February or early March?

A I mean sometime in February or early March, yes.

Q Can you tell the Court and jury what you said to Mr. Deutsch during the course of that conversation and what he said to you?

MR. SEGAL: May we have the conversation delineated as to in person or telephone and where?

THE COURT: I picked it up as telephone, and that was really because of a question put by the Government.

This discussion that you had with Mr. Deutsch prior to March 10, 1969, which you are about to relate, was that in person or on the phone?

THE WITNESS: On the phone.

THE COURT: Can you tell me who were the parties who were on the telephone?

THE WITNESS: Myself and Mr. Deutsch.

THE COURT: I will permit an inquiry and this conversation will be received subject to connection relative to the Messrs. Cohen and Duboff.

Would you now tell us, to the best of your recollection, what you said, and what Mr. Deutsch said?

MR. SEGAL: Your Honor, may the witness first be qualified in terms of this conversation?

THE COURT: He had already met him. Is that what you mean?

MR. SEGAL: Yes, your Honor.

THE COURT: Can you tell us who called whom?

THE WITNESS: I believe he called me.

THE COURT: Did you recognize the voice of the speaker as the person you had previously met in Denver?

THE WITNESS: Yes.

MR. SEGAL: Very well, your Honor.

Q Go ahead, Mr. Hurley.

THE COURT: Just one moment, please.

(Pause.)

THE COURT: Sorry.

Q Go ahead, Mr. Hurley.

A Well,he said that Richard Packing Company would have a stock offering and that the funds could receive some shares from this offering. The stock was selling then in the 30's, $32 a share, or something. That this offering would be below that and that the fund would do very well will it and the stock should go up thereafter.

Q What, if anything, did you do after that telephone conversation?

A Well, we bought the shares.

Q How many shares did you purchase?

A 5,000.

Q At what price?

A $28.

Q Did the price of Richard Packing stock go up after that time?

A Yes, it did.

Q Did you, as the portfolio manager, continue to buy Richard Packing stock?

A Yes.

Q I want to direct your attention to April of 1969, Mr. Hurley.

Did you have an occasion to go to Las Vegas at that time?

A Yes, I did.

Q Who did you go with?

MR. ROBSON: Could I have the date again?

THE COURT: I had it as April.

MR. FEFFER: During April, your Honor.

A Well, I went, myself, Bob Anton and Lambert Hirchimer.

Q Who was Mr. Hirchimer?

A The vice-president for Financial Programs, and he did the trading for all the funds, the stock transactions, and our families went.

Q Who did you meet with in Las Vegas at that time?

A Mr. Deutsch, Mr. Duboff, the top men in several companies, including Mr. Cohen, of Richard Packing.

Q Do you see Mr. Deutsch in this courtroom today?

A Yes, I do.

MR. SEGAL: We will acknowledge that, your Honor.

THE COURT: It is conceded the witness knows the defendant Bernard Deutsch.

Q Do you see Mr. Duboff?

MR. ROBSON: Conceded.

THE COURT: It is conceded the witness knows Mr. Stanley Duboff.

Q And Mr. Cohen?

MR. BLOCK: We will concede that.

THE COURT: It is conceded the witness knows the defendant Milton Cohen.

Q Was this the first time you met Mr. Duboff?

A Yes.

Q How was he introduced to you?

A By Mr. Deutsch, "This is Stanley Duboff I have told you about. He is my partner."

Q You also made reference to the fact that you saw Mr. Cohen at this time?

A Yes.

Q Was this the first time you met Mr. Cohen?

A Yes, it was.

Q Where did you meet with Mr. Cohen and who was present?

A We had a breakfast meeting, myself and Bob Anton, present with Mr. Cohen.

Q During the course of that breakfast meeting, what did Mr. Cohen say to you and what did you say to Mr. Cohen?

MR. SEGAL: Objection, your Honor; limiting objection.

THE COURT: This is offered subject to connection. Mr. Cohen was there, and was either Mr. Deutsch or Mr. Duboff at the breakfast meeting?

Packing Company and I was interested in how this company could become another McDonald's, and Bob Anton and I were asking Mr. Cohen questions and we were trying to determine the substance, the concept of the company.

Q What did Mr. Cohen say to you in response to those questions?

A He told us how this fast food restaurant would serve the public better than, for example, a McDonald's. He said that it would manufacture hamburgers, making eight patties to the pound, rather than ten, like McDonald's, would put these patties and about a bigger bun, use better ketchup, fresher pickles, put less ice nad more syrup in the coca-cola and use fresh potatoes for french fries.

He talked about the decor being -- the concept of the decor was a circus, and so there would be colo[illegible] pink and purple, there would be clowns and tent awnings and there would be accommodations for sitting down, which McDonald's didn't have at that time.

He said that twenty of these were sold and that it looked like many more could be sold -- well,it looked like it would be a success.

He described that this was a change of his original concept, which was to show movies on the wall while people ate hamburgers, and this had been a step

(In open court - jury present.)

THE COURT: You may proceed, Mr. Feffer.

BY MR. FEFFER:

Q Mr. Hurley, approximately how long did you, Mr. Anton and Mr. Hirchimer remain in Las Vegas?

A Two to three days.

Q Did you return to Denver after this time?

A Yes, I did.

Q Did you have an occasion to speak with Mr. Deutsch shortly thereafter?

A Yes.

Q Was this in person or by telephone?

A By phone.

Q Can you tell the Court and jury what you said to Mr. Deutsch during the course of this conversation and what he said to you and approximately when it occurred?

A Yes.

Basically --

MR. ROBSON: Subject to connection, of course, your Honor.

THE COURT: Yes, relative to Mr. Cohen and Mr. Duboff.

MR. SEGAL: May we have the time first, before the conversation, your Honor?

THE COURT: Yes, could you tell us, to the best of your recollection, the date or approximate date you had this telephone conversation with Mr. Deutsch?

THE WITNESS: It would be late April or early May.

Q Again, Mr. Hurley, please tell the Court and jury what Mr. Deutsch said to you and what you said to him during this conversation.

A Basically, I reflected the fact I was very impressed with Milton Cohen and with the prospects of Richard Packing and that the fund -- and I said that Bob Anton was, too, and that the fund would be interested in seeing all the stock in Richard Packing that he could show us.

In other words, we were buyers of the stock.

MR. BLOCK: You were what?

THE WITNESS: Buyers of the stock.

Q Do you know whether Richard Packing had a stock split at or about this time?

A Yes, it did.

Q Can you tell the Court and jury when you first learned of the proposed split?

A Well, it had been mentioned in the first meeting in February --

Q With who?

A With Mr. Deutsch.

Q When did you next have occasion to speak about this split?

A Well, about this time --

Q This would be when, approximately when?

A May.

Q Of '69?

A '69.

Q Go ahead.

MR. SEGAL: May we have the circumstances of this, your Honor?

THE COURT: Yes.

Q Was this in a telephone call?

A Yes.

Q With Mr. Deutsch?

A Yes.

Q Go ahead, Mr. Burley.

A He said that the stock was getting ready to split and asked how it should be split, or brought up the general question of how it should be split, and I said well, I didn't have much preference, did it matter. He said "Yes, it matters how you split a stock" and he taught me something new that I had not know before: For example, a 5-for-4

stock split, means anyone who owns a hundred shares, after the split they will own 120 shares, whereas, for example, a 2-for-1 stock split, if you owned a hundred shares before the split, you would own 200 afterward, and he said if i would be split to an odd ratio, that people who did own 100 shares would then own an odd number, they would own 130, or whatever, and that what they would do is either sell those 30 shares, for example, or they would buy another 70 to round themselves out so they would have 200 shares, in any case, it would cause activity in the stock, which increases the supply and the demand at the same time.

MR. BLOCK: If your Honor please, I would appreciate it if your Honor would say something to the jury. I remember when I was inquiring of Malmon about the declaration of the stock dividend I used the term stock split at one time and your Honor said well, it was the declaration of a stock dividend.

Now I gather it is one and the same thing, subject to your Honor's views on it, and I would appreciate your clarifying the point to the jury, because the two terms have been mentioned.

THE COURT: Yes, that is true. Basically, there is a similarity, as I understand it, between a stock

MR. FEFFER: Thank you, your Honor.

BY MR. FEFFER:

Q Mr. Hurley, from whom did the mutual funds in Denver, Financial Programs, purchase shares of Richard Packing from?

A Jaffee & Company.

Q Did you have a conversation with Mr. Deutsch with respect to the purchases of Richard Packing stock?

A Yes, I did.

Q When did this take place?

A Well, it would be in May, April or May, of 1969.

Q Was this a telephone conversation?

A Yes.

Q Again, can you tell the Court and jury what Mr. Deutsch said to you during the course of this conversation and what you said to him?

MR. BLOCK: This again is subject to connection?

MR. SEGAL: Can we locate this with any more precision?

THE COURT: Well, let's try.

First, this is subject to connection as to Mr. Cohen and Mr. Duboff.

What Segal has asked for, is can you pin down the date with greater certitude.

THE WITNESS: I am sorry, I can't.

THE COURT: What is the best you can give us?

THE WITNESS: April or May of '69.

Q Go ahead.

A The point that he made was that if we bought the shares from Jaffee & Company we would get better prices than if we bought them anywhere, not there, bought them on the street, so to speak, because Jaffee would give them to us at the bid price plus a commission.

Q Did he say anything else?

A Well, the reason that they could do that is that they knew where the stock in Richard Packing was, basically, so that they wouldn't have to hunt around and drive up the price by buying a few shares here and here and here and making the pricing up.

Q You made reference --

MR. SEGAL: Your Honor, I would ask that that last be stricken. That doesn't seem to tally with anything the witness is saying.

Q Is that what Mr. Deutsch said to you, Mr. Hurley?

A Yes.

THE COURT: There we have it. It will stand.

Q I think you made reference to a bid price.

A Yes.

*****

conversation?

MR. FEFFER: Yes, your Honor. That would save everybody a lot of time.

MR. SEGAL: Your Honor, I don't want this kind of offer made. I think that is improper.

Q In July of 1969 do you know how many units, Circus Wagon units, had been contracted for or were in the process of being contracted for?

A Yes.

Q How did you learn that?

A From Mr. Deutsch.

Q Was that in a telephone conversation?

A Yes.

Q Can you tell the Court approximately when that conversation took place?

A July of '69.

Q Can youtell us what Mr. Deutsch said in that conversation and what you said?

THE COURT: This will be subject to connection relative to Mr. Cohen and Mr. Duboff.

A He said there were a hundred sold -- roughly a hundred, and a hundred more ready to be sold, near to closing.

Q Did you say anything to him in this conversation?

A Yes, I did. I said, "Well, that will take some money to build those units."

Q What did he say?

A Well, there is a Richard franchise investment that had a million or so dollars to do it, and he said a union pension fund, or some money to do with the union, in the amount of 15 or 20 million probably would be available.

Q Have you ever seen a report of any type, an investment report, of any type on Richard Packing Company?

A Yes.

Q How many?

A One.

Q Which one was that?

A It was a mimeographed copy of a report by a Mike Papworth.

THE COURT: I believe counsel is requesting Deutsch's Exhibit A in evidence.

Mr. Segal, do you have that?

MR. SEGAL: We are looking for the one that was marked, your Honor -- here it is, I have it.

Q I am going to show you what has been marked and received in evidence as Defendant Deutsch's Exhibit A and I ask you to look at it and ask you whether that is the

report you are referring to.

A Yes.

Q You testified that you saw this report. Can you tell the Court and jury how you received it?

A From Mr. Deutsch.

Q Have you ever seen an annual report of Richard Packing Company?

A No.

MR. SEGAL: May we get a date on when this report was received?

THE COURT: I think it is something you might want to go into on cross examination. Why don't you leave that, unless the government wants to bring it up now.

Q Do you recall the approximate date when you received the Papworth report?

A The best I could place it would be May or June of '69.

Q Have you ever seen an annual report for Richard Packing Company?

A No.

Q Did you ever have a conversation with Mr. Deutsch with respect to an annual report?

A Yes, I did.

Q Please tell the Court and jury when the first

such conversation took place?

A It was in July or August of '69. The company's year had ended.

Q Was this a telephone conversation?

A I believe so.

Q I believe you made reference to the company's year ending. Can you explain that?

A Well, our accounting period ended in June of '69, the fiscal year, so to speak.

Q In this conversation please tell the Court and jury what you said to Mr. Deutsch and what he said to you?

MR. BLOCK: Again, subject to connection?

THE COURT: As to Mr. Cohen and Mr. Duboff.

A I generally was saying "Where are the financial reports, where is the annual report on the company?"

Q What did he say to you?

A He said it would be coming.

Q Approximately how many times thereafter did you speak with Mr. Deutsch on this same subject?

A Five or ten, maybe.

Q Were these by telephone?

A Usually, yes.

Q Again, can you state to the Court and jury what you said to Mr. Deutsch on these occasions?

A That there should be --

MR. SEGAL: May we have the times, your Honor?

THE COURT: Let me ask you this: Do you remember the dates that you had these five or ten, I think it was, conversations with Mr. Deutsch? If you don't remember the exact dates, within what period did you have these conversations?

THE WITNESS: The period of July or August through the end of that year.

THE COURT: So that between July or August 1969 and the year ended you had some five or ten conversations wherein you asked Mr. Deutsch about the annual report?

THE WITNESS: Yes -- well, about financial information.

MR. SEGAL: Then, your Honor, I ask that statement be stricken about asking for financial reports or the annual reports.

Q Were you asking for both, Mr. Hurley?

A Well, an annual report is a financial report.

THE COURT: You take them the same?

THE WITNESS: Yes, sir. If there were other financial reports, I would want those too.

Q What did Mr. Deutsch say to you in these conversations, if you can recall?

A That it would be coming.

Q Did it ever come?

MR.SEGAL: Your Honor, we are talking about "it" and this witness describes it as two different things.

THE COURT: Did any annual or financial report ever come, i.e., was it ever furnished to you?

THE WITNESS: No.

Q Did you have an occasion to meet with Mr. Deutsch in late February or March of 1970 in California?

A Yes, I did.

Q Where did this meeting take place?

A At the Beverly Hills Hotel.

Q Who was present at this meeting?

A Myself, Mr. Deutsch and John Marcou.

Q Who was John Marcou?

A A stock broker.

Q Can you tell the Court and jury what Mr. Deutsch said to you and what you said to Mr. Deutsch during this meeting?

A We talked about a number of things and we were talking about Richard Packing and I was just generally asking how come the company wasn't doing as well as it was supposed to be doing and, you know, was the money there to build the franchises, why had not as many franchises

ben sold as had been projected, and, in general, I was just asking about the company and expressing some disappointment with it.

Q What did he say to you?

A Well, he said "It will be okay. Don't worry about it."

Q Did he say anything else?

MR.BLOCK: Who is this, Deutsch, speaking?

MR. FEFFER: Yes.

MR. BLOCK: It is Deutsch and Duboff present --

MR. ROBSON: Duboff is not present.

THE COURT: Are you making a request?

MR.BLOCK: Subject to connection.

THE COURT: Subject to connection as to the Messrs. Deutsch and Duboff.

When was this meeting?

THE WITNESS: Early winter of '70.

Q Did he say anything else?

A He said the money was there to build the franchises, and so forth, and I got a little angry --

MR. SEGAL: Objection, your honor, to anything other than the conversation.

THE COURT: Let's disregard that, ladies and gentlemen.

Q Can you give me what Mr. Deutsch said only, in some detail?

A Well, he was saying that the financial reports would be on the way, that the franchises had been sold, or were about to be sold, and that things would be okay, the stock would do all right.

Q Was there any discussion about the financial --

MR. SEGAL: Objection.

THE COURT: Yes, you are leading. The objection is to form and properly taken.

Q Was there anything else said?

A Yes.

Q Go ahead.

A We talked about the -- I have already said this, I think -- about the money to build them --

MR. SEGAL: I object to anything further, if he has already said it.

Q Is there anything in addition to what you have related to the Court and jury that Mr. Deutsch said?

A Yes.

Q Can you please tell me what that is?

A Well, it wouldn't make much sense unless I say what I said.

THE COURT: Of course you can say what you said

as well. It is a conversation and it takes two to converse.

A I said I felt like selling all the Richard Packing.

Q You felt like selling all the Richard Packing, yes.

MR. SEGAL: Your Honor, we don't need the repetition by the questioner. We need the conversation.

THE COURT: We are trying to get it now. We have a certain amount of the conversation, but I think the witness had not finished. Would you proceed?

Q What did Mr. Deutsch in response to that comment of yours?

A He said couldn't he get out first.

/74 3b

1 rmmch Hurley-direct

Q What did you say?

A I walked away.

MR. BLOCK: I didn't get that.

THE COURT: I didn't, either.

THE WITNESS: I walked away. I didn't say anything.

Q When did you leave Financial Venture Fund?

A June of 1970.

Q Do you know a Perry Leff? L-e-f-f?

A Yes.

Q Who is Mr. Leff?

A He is the president or was the president of Dimension 5, Limited, which is a company Venture Fund had invested in.

Q Did you have an occasion to see Mr. Leff at approximately that time, June of 1970?

A Yes.

Q Where did you see him?

A In his offices in Century City, which is in Los Angeles, California.

Q At that time did you have occasion to speak with Mr. Deutsch?

A Yes, I did.

Q Was that by telephone?

A Yes.

Q Can you tell me the conversation that you had?

MR. SEGAL: We don't have a date on this, your Honor.

THE COURT: I had it as June 1970.

Is that when you spoke with Mr. Deutsch?

THE WITNESS: Yes. Late May or early June of 1970.

Q Go ahead.

A Well, I talked with Perry Leff and the company -- he had a small company there and he had several good prospects, but it was running out of money --

MR. ROBSON: If the witness is not telling us about his conversation, I object to it.

THE COURT: I thought he was, but I think we can make certain of that.

Now we are in May or June of 1970?

MR. FEFFER: That is correct, your Honor.

THE COURT: And following your discussion with this gentleman, Perry Leff, as I understand it, you had a conversation with Mr. Deutsch?

THE WITNESS: That's right.

THE COURT: Was that in person?

THE WITNESS: No, on the phone.

3 rmmch Hurley-direct

THE COURT: Would you tell us what he said and what you said?

THE WITNESS: Well, I said that Perry's company could do all right, but it was running out of money and could we get some money for it, and he was overseas at the time --

Q Do you know where he was?

MR. BLOCK: Who was overseas?

THE WITNESS: Mr. Deutsch.

A He was in Israel or Switzerland.

Q Go ahead.

A That is the best I can recall.

Q Go ahead.

A I can summarize what I said by saying I came on strong for Perry Leff and to get money into Dimension 5, and I asked Mr. Deutsch if he could raise money for the company.

MR. ROBSON: If your Honor please, I object on the ground that I don't see any relevance to this conversation.

THE COURT: May I suggest that I do and I am going to overrule your objection.

MR. SEGAL: May we come to the side bar, your Honor?

THE COURT: No. I want to hear the rest of this conversation between Mr. Deutsch and the witness, and then if you still want to come to the side bar with the next phase of the matter, we can do it, but I see the relevance here and I am going to permit the inquiry.

You spoke on the telephone, you said, with Mr. Deutsch who was overseas at the time and you thought he was in Israel or Switzerland?

THE WITNESS: Yes.

THE COURT: What did you say and what did he say?

THE WITNESS: Well, I said that I thought Perry's company could come out of its problems okay if it had some money to operate at this point, and could Mr. Deutsch get some money for the company. And he said he would look into it, and we spoke again on the same subject by phone --

Q When was this?

A A couple of hours or a day after. It was in the same time period and because of the time difference --

Q You were in California?

A Yes.

Q Go ahead.

A He said he would commit a hundred thousand dollars to Dimension 5, Limited.

Q Did he say anything else?

A That's all.

MR. SEGAL: I would like to come to the side bar, your Honor.

THE COURT: You may.

MR. SEGAL: Do we have now the full conversation, your Honor?

MR. FEFFER: That's it.

(At the side bar.)

MR. SEGAL: Your Honor, I am outraged at a cheap shot. The only reason why this came in and they know why it came in was because he wanted to get Switzerland into this thing and that is the only reason for this conversation.

It has nothing to do with these matters and all it is is prejudical, damned bold prejudice, and the Government knew it and there is no reason for this to come in. This is not relevant, all it is is throwing mud on this man and getting innuendo for no reason into this record.

MR. FEFFER: Your Honor, if you recall, a man's name was brought up during Mr. Shwidock's cross-examination, Joe Glaeser, and there was considerable cross-examination by Mr. Robson as to Mr. Shwidock's alleged connections with

Israeli and Swiss banks overseas, not during the time of the conspiracy, but during '72 and '73, to try to paint the picture Mr. Shwidock was sending those checks --

THE COURT: Yes, I remember the whole bit.

MR. FEFFER: I will demonstrate through this witness and a subsequent witness that, in fact, the man dealing with Mr. Glasser and that Swiss bank was none other than Bernard Deutsch.

MR. SEGAL: This is as collateral a matter as we could get into. We have every right to go into a witness, but this man is on trial now and the same rules don't obtain as to the admissibility of evidence. If we are trying to cut this man down, then maybe they will have an opportunity if the defendant takes the stand, but to do it in this way, to have his rights, his freedom biased by this kind of thing is reprehensible, beyond description.

If we wanted to do this with a witness, you cannot say it is the same thing.

THE COURT: If you are going to make extensive inquiry into matters, and I have given you a lot of latitude on cross-examination, you have to be prepared for the Government to come back in the same areas.

MR. SEGAL: I was cross-examining Mr. Shwidock

and how does that leave my client open to be examined through this witness?

MR. FEFFER: That was by Mr. Robson, your Honor --

MR. ROBSON: Let me say something --

MR. SEGAL: Your Honor, we are talking about a man on trial who, if he is going to be convicted, has to be convicted by a preponderance, by evidence beyond a reasonable doubt, but not by this kind of fishwife kind of hawkery we are getting.

MR. ROBSON: If I were to cross-examine a witness and bring in the fact that he had been convicted of a crime, would that authorize the Government to introduce evidence that the defendant had been convicted of a crime? We cross-examined the witness for the purpose of casting doubt on his credibility and that doesn't authorize the Government to introduce collateral evidence of some other act of the defendant, unless the defendant takes the stand, at which time I assume you have a right to go into anything within reason.

MR. SEGAL: I don't know there is anything I can do, but respectfully I move for a mistrial.

THE COURT: Among other things, Mr. Segal, your request to come to the side bar was after -- I don't

recall the context of the whole thing -- after the damaging testimony had been admitted into the record, and it was about one question thereafter.

MR. SEGAL: Your Honor, the Government made a representation to the Court and they got into a conversation and they knew that the conversation with my man would be germane and would be unexceptional, providing that conversation was profferable or was properly done.

THE COURT: It must include, to be admissible against your man, an admission against his penal interests and you feel what was said here was in any way an admission against the penal interests of your client?

MR. SEGAL: Absolutely not, your Honor.

THE COURT: You feel the portion of this witness' testimony which relates that your client was in Israel or Switzerland at the time is in no way germane to any issue here in this Court, in this information?

MR. SEGAL: Your Honor, this is not a proper manner of getting at that kind of evidence, and if the Government is going to argue because of the presence of my man in a foreign jurisdiction that proves the fact that they are in some way, or that he is in some way receiving money, well then, I think that the whole matter of jurisprudence has taken a turn that I have been completely

9 rmmch Hurley-direct

unaware of.

THE COURT: Have you heard of inferences?

MR. SEGAL: Yes, but they are unfair.

THE COURT: Have you heard of circumstantial evidence?

Let me hear from the Government.

MR. FEFFER: We are going to establish, your Honor, and it is very germane to the information in this case, that Mr. Deutsch had a relationship with the Reiss Bank and that is of the utmost importance in terms of the credibility of Mr. Shwidock, as to whether he was sending checks to the Reiss Bank for his own benefit, as Mr. Segal and the defense counsel argued, or whether in fact, through circumstantial evidence, and other means, we can establish that Mr. Deutsch was the person who had the relationship with the Reiss Bank and thereby prove that when checks went to the Reiss Bank they went to him, or to his benefit.

MR. ORENSTEIN: Your Honor, in light of all the testimony that has gone in, I submit it is so highly prejudicial with respect to Mr. Cohen that now is the time, if at any time, that he should be severed from this case.

THE COURT: The answer to your application is no.

One thing I have remaining before me is whether I strike this last telephone conversation from the record and direct the jury to disregard it.

MR. FEFFER: Your Honor, again --

THE COURT: Let me hear you on this, because I am seriously considering it.

MR. FEFFER: We have charged in the information that $15,000 was sent to the Reiss Bank --

THE COURT: When?

MR. SEGAL: And in what way?

THE COURT: I have a group of checks, the very last of which was dated August 7, 1969, the first of which was dated, if I am correct, November 8, 1968.

MR. FEFFER: That is correct.

THE COURT: Now you are talking about a telephone conversation which took place in June of 1970.

MR. FEFFER: Yes. We are entitled to prove by circumstantial evidence that Mr. Deutsch, in fact, did have a relationship with the Reiss Bank. This is especially germane when Mr. Shwidock was subjected to cross-examination on Mr. Zysman, in 1972 or 1973, on Mr. Zysman's partner, Joe Glaeser, who opened an Israeli Bank, whether he knew, and the inferences were clear to the jury that they were trying to show Mr. Shwidock had a Swiss account --

whether Mr. Glaeser was associated with Jack Reiss in both an Israeli Bank and the Reiss Bank, and these questions went to '72 and '73. Certainly we are entitled, your Honor, to show it was not Mr. Shwidock's relationship with the Reiss Bank, that Mr. Deutsch had the relationship.

We have the right to answer insinuations made like that.

THE COURT: Wouldn't it be at least proper to tell the jury that this last conversation should be utterly and completely disregarded relative to Mr. Cohen and Mr. Duboff?

MR. FEFFER: Yes, your Honor. I would have no objection to that.

THE COURT: That is what I will do.

MR. FEFFER: We are entitled to show by any means we can that Mr. Deutsch rather than Mr. Shwidock had this relationship with the Reiss Bank, whether it was before or after the time in question. The relationship with the Reiss Bank is very strong circumstantial evidence.

THE COURT: I will tell the jury to completely disregard this last telephone conversation in their consideration of this case as it relates to Mr. Cohen and Mr. Duboff.

MR. BLOCK: I would like to say something, your

Honor. May I?

THE COURT: You certainly may.

MR. BLOCK: Your Honor, there is complete, and I say this with all due respect, inconsistency, because your Honor is letting this all come in subject to connection, as I understand it --

THE COURT: But it would have to be in furtherance of the conspiracy. I have some difficulty, Mr. Block, in seeing this conversation, which might be construed as an admission against the interest of Mr. Deutsch, to be in furtherance of the conspiracy.

First, it happened rather late in point of time, toward the end, and therefore I am thinking of various problems, and that is basically why I came up with the comment which I did.

MR. BLOCK: Then I would like to suggest this, your Honor, that your Honor's direction to the jury will be insufficient to counteract the prejudice arising from this evidence, and I cite to your Honor Krulewitch and Bruton and I again renew the motion for a severance, and I make that point very specifically, because I don't think your Honor's direction undoes the damage that has been done.

THE COURT: I don't think we have that type of

a situation here. I recognize the point, as it was so well stated in Krulewitch, but under the circumstances I would suggest there is a lot more subtlety to this conversation than there was to the evidence in Krulewitch.

MR. ROBSON: I still have the same objection. I don't think that there is the slightest possibility in the world that any instruction your Honor gives under the circumstances could separate in the minds of the jurors Duboff and Deutsch with respect to these checks.

THE COURT: If you object, both Mr. Block and Mr. Robson, to my giving a curative objection at this time, I will not.

MR. BLOCK: I am just saying you are not going far enough. That's all.

MR. ROBSON: I am saying that obviously if you overrule my objection, after all the discussion, then of course, I at least want that, but what I am saying is that I think that is not an adequate treatment and I think the evidence should not be permitted in. I think it is so collateral, so prejudicial, and if they -- first of all, this witness didn't even testify the money that went to the Reiss Bank was for the benefit of Deutsch or Duboff. His testimony was pretty clear, that he said it would be to everybody's benefit to send money to the Reiss

Bank. Now we have inference that because he knew somebody in the Reiss Bank, spoke to somebody there --

THE COURT: You have to go back to the beginning. How did Shwidock ever get to know anything about the Reiss Bank?

MR. ROBSON: I don't know. I just know he testified about that.

MR. FEFFER: Your Honor, this was in the way of a preliminary conversation and there will be no doubt through other evidence that we can establish at the end of the conspiracy or the post-conspiracy that Mr. Deutsch had a positive relationship with the Reiss Bank.

THE COURT: If you can do that, wouldn't you be safer if I told the jury to disregard the conversation as to all the defendants?

MR. FEFFER: No, because this conversation is part and parcel of the necessary piece of evidence. This is necessary, preliminary conversation to understand the balance that is coming in.

MR. SEGAL: Your Honor, you have indicated the difficulty that this raised clearly with respect to two of the other defendants here --

THE COURT: I don't see it in furtherance of the conspiracy, to be candid with you.

MR. SEGAL: I think the same inhibiting factors that relate to those two factors, being outweighed by the prejudicial effect of this, makes it equally inadmissible against Mr. Deutsch.

In addition to the arguments I made this morning, now the Government is trying to build an inference on an inference and reach a conclusion way down the block, and this conversation doesn't even relate to Richard Packing stock. They are trying to build on the fact that some Dimension 5 outfit needed financing and this witness got in touch with my man and his recollection is that it was either in Switzerland or in Israel and that recollection, I would say, is extremely important, but the point is that at this point this evidence is so prejudicial, this is building on such a thin inference, and so extraneous to the issues of this case, and unprobative of any kind of material at all, that I respectfully ask it be stricken, and I would also make my motion for a mistrial, which I think I have mentioned already.

THE COURT: Number one, I am prepared to tell the jury to disregard this last telephone conversation in any way, shape or form as it relates to Mr. Duboff. Relative to Mr. Deutsch, I am prepared to consider a subsequent motion by you, either a renewal of this motion or a motion

to strike it in the event that the Government doesn't follow through with its offer of proof in a manner which I believe to be relevant, competent, material and in every way proper.

MR. SEGAL: Can the Government at this time give us an offer of proof so that we know what it is like, so I don't have to sit here and be distinguished from these other two individuals while I am waiting for something that may not pan out? Your Honor, I bet they can't do it.

THE COURT: I am prepared to ask the Government to make a representation at this time.

MR. FEFFER: All I can say, your Honor, is this, because I feel this is one of the situations your Honor gave us leniency in, in not disclosing the names of witnesses and giving up 3500 material ahead of time --

THE COURT: Without telling me the "who," tell me the "what."

MR. FEFFER: That a portion of the proceeds that went to Dimension Management came from Reiss.

THE COURT: And Dimension Management--

MR. FEFFER: -- is a company that Mr. Leff was with, that Mr. Deutsch introduced to the Fund, that the Fund bought stock in, but that is irrelevant, your Honor --

MR. SEGAL: It is your offer of proof --

17 rmmch

MR. FEFFER: Dimension 5, your Honor, is not the relevant thing here. The thing is that Mr. Deutsch was able to get money from the Reiss Bank to provide Mr. Leff. That is relevant. How Mr. Segal can sit here and say --

MR. ORENSTEIN: The witness is listening to everything that is being said here.

MR. SEGAL: How can you prove that check came --

MR. FEFFER: We can establish by this means a clear nexus between Mr. Deutsch and the Reiss Bank.

Mr. Robson and other counsel spent considerable time trying to put the inference in the jury's mind that it was Mr. Shwidock who knew Jack Reiss and Glaeser and Zysman and Swiss banks, and they were trying to draw the inference it was Shwidock.

MR. ROBSON: The inference I was trying to draw was -- I asked Mr. Shwidock, "Wasn't the account you met with Mr. Reiss Mr. Zysman," and that Shwidock developed his own relationship with the Reiss Bank.

THE COURT: That is the way I heard it, and that is why I think --

MR. FEFFER: Mr. Robson even showed an exhibit, which he did not offer, which had something about Israeli banks on it. I don't recall the number.

He was trying to establish that Mr. Shwidock

was involved in an Israeli land deal with the Reiss Bank checks and thereby establish a relationship between Reiss and Shwidock.

THE COURT: Gentlemen, I am ready to rule.

I deny the motion for a severance. I deny the motion for a mistrial.

I am prepared to give limiting instructions which I indicated vis-a-vis the Messrs. Cohen and Duboff, and I will consider your application further, Mr. Segal, as the proof develops.

(In open court; jury present.)

THE COURT: Ladies and gentlemen, I direct that you disregard the last telephone conversation testified to by the witness in every way, shape and form in your consideration of the case against Mr. Cohen and Mr. Duboff.

With regard to your consideration of the case against them, I direct that you erase this last conversation testified to by the witness from your minds.

I note the hour and since I have some other matters which we will be taking up tonight and also will have to take up first thing tomorrow morning, I think that it would be an appropriate time for us to recess for the day.

Ladies and gentlemen, we will recess now, and

19 rmmch Hurley-direct

because of something that must be taken care of in the morning, I will direct the jurors to return to begin hearing this case again tomorrow morning at 10:00 a.m. That is a little later than we have been starting. Tomorrow morning we will begin promptly at 10:00 a.m., and I would direct the jurors not to discuss the case among themselves or with any other person or remain within the hearing of the voices of any other people who might be discussing the case.

Should you see, hear or read any publicity relative to this case, I direct that you report the matter to me at once and, finally, I request you to continue to keep an open mind on all facets of the case until the case has been concluded.

The jury is excused and is directed to return at 10:00 a.m. tomorrow morning.

The witness may stand down. You, sir, are directed to return at the same hour.

(The jury leaves the courtroom.)

(The witness leaves the courtroom.)

THE COURT: This is off the record.

(Discussion off the record.)

(Adjournment taken to April 8, 1974 at 10:00 a.m.)

WITNESS INDEX

Name	Direct	Cross	Redirect	Recross
Ruth Appleton (Resumed)	1676	1693	1775	1790
John R. Hurley	1816			

EXHIBIT INDEX

Government	Identification	In Evidence
33	1837	

UNITED STATES OF AMERICA

v.

MILTON COHEN, et al.

May 8, 1974
10:45 a.m.

- - -

(Trial resumed - jury present.)

THE COURT: Good morning.

I want to apologize to you ladies and gentlemen. I had another matter on and it started a few minutes later than I expected and ran a few minutes longer than I expected. So we are getting somewhat of a late start this morning, but I do want to take the full responsibility for it, because it was a matter completely unrelated to the case here and it just took a little longer.

I think I have indicated to you that I am charged with several hundred different cases and occasionally over a trial that runs a period of time there are other counsel in the other cases who require me to take some time away from you. I try to schedule most of the things very early in the morning or afteryou have left in the afternoon, but sometimes there are not just enough early mornings and afternoons and this cut into our morning.

We will proceed now, continuing with the direct examination of Mr. Hurley.

Mr. Hurley, you were placed under oath yesterday. Do you understand that you continue your testimony under the oath administered yesterday?

THE WITNESS: Yes, sir.

J O H N H U R L E Y, resumed the stand and testified further as follows:

DIRECT EXAMINATION CONTINUED

BY MR. FEFFER:

Q Mr. Hurley, I am going to direct your attention to July of 1969. Did you have an occasion at that time to go to Las Vegas?

A Yes, I did.

Q Who did you meet in Las Vegas?

A There were a number of people there, including Mr. Deutsch and Mr. Duboff.

Q Did you have a conversation with Mr. Deutsch and Mr. Duboff while you were in Las Vegas?

A Yes, I did.

Q Can you tell the Court and jury, as best as you can recollect, what Mr. Deutsch and Mr. Duboff said and what you said?

MR. BLOCK: This is subject to connection against

Mr. Cohen.

THE COURT: Indeed.

A Well, we talked about a number of things. At one point I had a conversation with Mr. Deutsch alone --

Q So Mr. Duboff was not present in this conversation?

A No -- where Mr. Deutsch indicated that --

MR. SEGAL: I am going to ask your Honor that the witness testify to what was said, not what was indicated.

THE COURT: Yes. You will be required here, under our rules of evidence, to either indicate the words which were spoken or the substance of what was said. Do you understand?

THE WITNESS: Yes.

THE COURT: Not "he indicated" and also I want you to avoid how you felt at the time. That is not germane here. It will be gernmane as to what was said.

You can now tell us about this conversaion, to the best of your recollection, in words or substance.

A The substance of what Mr. Deutsch said to me was that he and Stanley were not too happy at Jaffee & Company and that they were thinking of opening a new brokerage business, would I be interested in joining this.

I said "Not in New York. I like the west."

He said, "Okay. We will think about it. We have to get clearance from whoever to do this."

Q Did you have occasion to speak with Mr. Deutsch in late December '69 or early January, 1970?

A Yes, I did.

Q Was this by telephone?

A Yes.

Q Can you tell the Court and jury on that occasion what Mr. Deutsch said to you and what you said to Mr. Deutsch?

MR. SEGAL: Your Honor, I would object to any further conversation such as the one we have just heard.

THE COURT: What is the date of it?

MR. SEGAL: Late December '69, early 1970. It is the subject matter that I am objecting to.

THE COURT: Do you wish the United States Attorney to make an offer of proof?

MR. SEGAL: Yes, your Honor.

MR. FEFFER: It is the same subject matter as related by the witness as to the conversation he had in Las Vegas.

THE COURT: The one he just finished talking about?

MR. FEFFER: It is on the same matter.

MR. SEGAL: I just have a standing objection to that, your Honor.

THE COURT: You have.

Who was present at this discussion --

MR. FEFFER: A telephone conversation, your Honor.

THE COURT: Who was on the phone?

THE WITNESS: Myself and Mr. Deutsch.

THE COURT: Then this will be received subject to connection as to Mr. Cohen and Mr. Duboff.

You may now tell us about the telephone conversation.

MR. ROBSON: Your HOnor, for the record might I note I have a general objection in addition to the subject-to-connection objection?

THE COURT: Very well.

MR. BLOCK: I join in that, your Honor.

A The substance of the conversation, Mr. Deutsch said that the brokerage house that he had mentioned in the summer was open, there was a man there running it, who had sold a store and put up money to open the brokerage house, and that it was in operation and that myself and Paul Krueger who was a fund manager for Steadman Fund in Los

Angeles should come to New York and discuss the west coast operation of this brokerage firm.

Q Did you thereafter go to New York City?

A Yes, I did.

Q Approximately when was this?

A January of '70.

Q Where did you stay at that time?

A At the Regency Hotel.

Q I want to show you what is marked as Government's Exhibit 36 for identification and ask you to look at this and to identify it, if you can.

A I believe it is the sign-in slip for the Regency. It has --

Q That's okay. What is the date on that, if you can recall?

A It says "Departure: 1/20."

Q Does this represent the hotel bill or sign-in for you?

A For my self and Mr. Krueger.

MR. FEFFER: The government offers Government's Exhibit 36.

THE COURT: Show it to counsel.

MR. BLOCK: I take it that is taken subject to connection as far as Mr. Cohen is concerned?

THE COURT: That's correct.

(Pause.)

MR. SEGAL: I have no objection, your Honor.

THE COURT: Mr. Robson?

MR. ROBSON: I have no objection.

THE COURT: Mr. Block, yours is subject to connection, is that right?

MR. BLOCK: Yes, sir.

THE COURT: It will be received in that vein.

(Government's Exhibit 36, received in evidence.)

THE COURT: This is dated January of 1970, is it? I am trying to make it out. January, 1970?

MR. FEFFER: I believe it says 1/70, your Honor.

THE COURT: It says 1 with a slash, but not the year.

MR. FEFFER: 1/20, is that correct?

THE COURT: 1970.

MR. FEFFER: Then there is a time stamp here. May I refer this to the jury, your Honor?

THE COURT: Yes, this is in evidence, ladies and gentlemen, and is received subject to connection relative to Mr. Cohen.

(Mr. Feffer read to the jury from Government's Exhibit 36, in evidence.)

Q Did you have an occasion to meet with anybody at the Regency Hotel at that time?

A Yes, I did.

Q Who did you meet with?

A Well, there was a meeting, I believe it was in my room, of several people. Mr. Deutsch, Mr. Duboff, Mr. Krueger, Mr. Ryback, myself and there were several other people whose names I can't remember.

Q Approximately how long did that meeting last?

A I would say two hours, three hours. The other people whose names I can't remember were there for general discussion.

Q How long were they there for, approximately?

A They were ther for a half-hour, an hour.

Q I'm going to direct your attention to the time period after these people left the room. Who was remaining in the room after these people left?

A Mr. Deutsch, Mr. Duboff, Mr. Ryback, Mr. Pflueger and myself.

Q Who is Mr. Ryback?

A He was introduced as the man who was the President of New Dimensions Securities, which was the name of the brokerage firm, and who had sold a variety store and put up the money for opening this brokerage firm.

Q Can you tell the Court and jury the conversation that took place in that room from Mr. Deutsch, Mr. Duboff, Mr. Ryback and yourself?

MR. BLOCK: If your Honor please, I have a general objection, as well -- I assume you're admitting it as well as admitting it subject to connection to Mr. Cohen?

THE COURT: Yes. Mr. Robson?

MR. ROBSON: I have a general objection to this whole line of questioning, your Honor. I wouldn't

keep repeating the objection.

THE COURT: And Mr. Segal.

MR. SEGAL: I have an objection.

THE COURT: There will be a standing objection to preserve the record so far as you gentlemen are concerned. I think perhaps, gentlemen, if it is agreeable to you also, the jury can be instructed now that whenever there is a conversation, until I tell them differently, which is not participated in by one of the defendants, it is received subject to connection as to that person who is not a participant in the conversation.

If you wish to have these further instructions made to the jury, of course, I will do that. But I want to instruct the jury that under the rules of evidence, if one or another of the defendant is not present, the testimony which you are hearing about a conversation in person or on the phone, as to the one who is not a participant in the conversation and who was n[illegible] it is received subject to connection, [illegible]structed you earlier in the case.

MR. BLOCK: Thank you, [illegible]our Honor. Does that mean that we don't have to raise then to point it out?

THE COURT: I would suggest if that's satisfactory to counsel, that might be better. Then we could

have continuity, and I know the jury understands. Very well.

Q Go ahead, Mr. Hurley.

A WEll, we discussed the substance of the conversation was the opening of a west coast branch, so to speak, of this brokerage firm and the basis on which Mr. Pflueger and I would join New Dimenstions Securities. We indicated that we would not wish to remain employees and that we would like to have a percentage of the business. That was satisfactory to the other people and Mr. Deutsch --

MR. SEGAL: Objection, your Honor.

THE COURT: What was said? Let's disregard "that was satisfactory to the other people," ladies and gentlemen.

THE WITNESS: They indicated that --

Q Who is they, Mr. Hurley?

A Mr. Deutsch and Mr. Duboff. Mr. Ryback said five words during that meeting.

Q What did Mr. Deutsch and Mr. Duboff say?

A They said, "Here are the percentages of the New Dimensions Securities as we project them" and they wrote out the percentages as they projected them.

Q Who wrote it out?

A Mr. Deutsch.

Q When you say percentages, what are you referring to?

A Well, the amount of ownership of the brokerage firm. And they -- he wrote out that he would receive 26% Mr. Duboff would receive 26%, Mr. Ryback I believe would receive 5%, and the cashier would recieve 1%, and Mr. Cohen would receive 12%. The remaining percentage was left blank and it amounted to 25%, which Mr. Pflueger and I were to divide up among us.

Q I show what's been marked as 37 for identification and I ask you to look at it and to identify it, if you can, please.

A Yes.

Q What is that?

A That was the sheet, the Regency sheet note pad that the percentages were written on.

Q Who wrote those percentages down?

A Mr. Deutsch.

MR. FEFFER: I offer Government's Exhibit 37 for identification.

THE COURT: Show it to counsel, please.

MR. BLOCK: If your Honor please, I have a general objection plus the fact if it is going to be admitted, it should be admitted subject to connection.

THE COURT: You have your objection. Same ruling. It will be received as to Mr. Cohen subject to connection.

MR. SEGAL: May I have a brief voir dire?

THE COURT: Yes, you may.

VOIR DIRE EXAMINATION

BY MR. SEGAL:

Q Mr. Hurley, is that your handwriting?

A No.

Q You did not make those notes, then?

A No, sir.

Q Did you have possession of this document?

A When?

Q Did you have possession of this document within the last month or two?

A No.

Q Did you have it within the last five months?

A I'm not sure.

Q Do you know when that document was made?

A Yes, at that meeting.

Q Did you see that document being made?

A Yes, I did.

Q You did not make it, though?

A No, sir

Q Did you see that within the last six months?

A Yes.

Q Was it in your possession?

A Yes.

Q Did you turn that over to the government?

A In answer to a subpoena with -- yes.

THE COURT: Yes?

THE WITNESS: Yes.

Q That document was in your records despite the fact that it is not your document?

A It was in my records.

Q But it was not a document made by you?

A That's right.

Q Did you refresh your recollection as to the figures on that when you saw that?

A When?

Q When you were questioned about the subject matter you just talked about.

A When I was questioned here, did I refresh my --

Q That's correct.

A I just looked at it.

Q Is there anything on that document which indicates that these are percentages for the subject matter you

THE COURT: Who made it up?

THE WITNESS: Mr. Deutsch.

THE COURT: And you picked it up?

THE WITNESS: Yes.

THE COURT: Are there objections, gentlemen?

MR. BLOCK: I have already stated mine, your Honor.

THE COURT: Very well. I will hear from Mr. Segal and Mr. Robson.

MR. ROBSON: Except for the general objection, no objection.

THE COURT: Very well.

MR. SEGAL: Same objection, your Honor.

THE COURT: As Mr. Robson?

MR. SEGAL: Yes, your Honor.

THE COURT: Very well. Same ruling. Received.

(Government's Exhibit 37 was received in evidence.)

xxx

MR. FEFFER: May I pass this to the jury, your Honor?

THE COURT: Yes, you may.

BY MR. FEFFER:

Q Mr. Hurley, there is one additional name on here that you did not refer to. I ask you to look at it. It says H. something.

A Hugh Deane.

THE COURT: What is next to that?

MR. FEFFER: Five, your Honor.

THE COURT: In other words, he was --

THE WITNESS: To receive five percent.

(Document handed to the jury.)

THE COURT: While the jury is looking at that, let me have counsel come to the side bar.

(Discussion off the record at the side bar.)

Q Mr. Hurley, after the figures were written down, the percentages, as you referred to them, what did you say to Mr. Deutsch that morning?

A The best I can recall, Pflueger and I -- I said "That sounds okay and on that basis we are pretty sure we will join the firm."

Q Did you have occasion to go to Los Angeles in possibly March of 1970?

MR. SEGAL: Your Honor, I am going to object to leading.

THE COURT: Yes.

MR. FEFER: Well, he has been there several times, your Honor.

MR. SEGAL: Well, your Honor, that is the point --

THE COURT: Please, please, please.

Did there come a time after January of 1970 when you traveled to Los Angeles?

THE WITNESS: Yes.

THE COURT: When was that.

THE WITNESS: February or March of --

THE COURT: 19?

THE WITNESS: '70.

Q Who did you meet with in Los Angeles?

A Several people, including Mr. Pflueger and Mr. Deutsch.

Q Where did you meet with Mr. Deutsch and Mr. Pfleuger?

A Well, we met at several places, including Century City, which is the old 20th Century lot, in Los Angeles, and it is now a complex of office buildings and apartment buildings.

Q What did you do when you got to Century City?

A We went up on the 12th floor, or 11th floor, and there was a small office there, small offices, with the name Dimensions Management on the door, and Mr. Deutsch said that this would be where the west coast branch of New Dimensions would be when it was cleared to do business on the west coast, and we went inside and there was carpeting and wallpaper and --

MR. ROBSON: If your Honor please, the question was, "With whom did you meet and where did you meet" and we are getting an awful lot of other material.

THE COURT: Yes. So far I have you with Mr. Deutsch and Mr. Pflueger entering an office on the door of which there was the designation "Dimensions Management" and this was on the 12th floor of one of the buildings at Century City.

Let's stop at that point and pick up with the next question.

Q What did Mr. Deutsch say, if anything, when you got to this door marked "Dimensions Management"?

MR. SEGAL: I object, your Honor. The U.S. Attorney should know, if he doesn't already, how to ask questions. I just don't want to keep standing up.

MR. [illegible]FFER: I believe I was directed to ask what happened at that point, your Honor.

THE COURT: Let's just do that. We have you again coming to this 12th floor office and as you came to the office, did anything happen?

THE WITNESS: Yes, sir.

THE COURT: What happened?

THE WITNESS: We went inside, and Mr. Deutsch said that this would be the office where the New Dimensions Securities would be located on the west coast.

Q Did he say anything else, Mr. Hurley, at that point?

A He said it would be decorated by Frank Austin who was an interior decorator on the west coast, who came in, along with Mr. Leff.

Q Who is Mr. Leff?

A He is the President of -- or he was at that time the President of Dimension 5, Ltd., which was a company that my fund had invested in.

Q Do you know what Dimension Management is?

MR. SEGAL: Your Honor, I am going to object to this.

THE COURT: Well, he had gone into an office. Let's find out. Overruled.

A All I know is what Mr. Deutsch told me.

Q What did he tell you?

MR. SEGAL: Objection, your Honor.

THE COURT: Overruled.

A He said it was a partnership or -- I guess he used the word "partnership" that he and Mr. Duboff had.

MR. SEGAL: Your Honor, I ask that this be stricken and I ask that the U.S. Attorney come to the side bar to make an offer of proof as to what we are getting into here.

MR. FEFFER: I can state, your Honor, if Mr. Segal would like, that it is relevant and it will be proven to be quite relevant.

MR. SEGAL: Your Honor, the U.S. Attorney has done that before and it was not relevant.

THE COURT: Please, gentlemen. We will proceed. Your objection is overruled. We will proceed.

If it is not, Mr. Feffer, I plan to say so to the jury, in no uncertain terms.

MR. FEFFER: Fine, your Honor.

THE COURT: You may proceed.

Q Did there come a time, Mr. Hurley, when you left Financial Programs?

A Yes.

Q When was that?

A June of 1970.

Q What did you do after that?

A I went to work in New Dimension.

Q Did Mr. Pflueger also go to work for New Dimension?

A Yes -- well, several months before that.

Q And this was in California?

A Yes.

Q You made reference to certain percentages that were contained on Government's Exhibit 36, 37 --

MR. SEGAL: Objection, your Honor.

MR. ROBSON: Your Honor, again we get into the leading. I understand what he is getting at and the proper question was "What was your percentage?" and not to show him and say "Do you remember these percentages and did you get the same percentage?"

Mr. Feffer can get up on the witness stand and testify--

THE COURT: Please.

MR. FEFFER: Your Honor, I was making reference to this in order to ask the question --

THE COURT: Gentlemen, no colloquy, please. I know tempers occasionally get short as we move into the

third week of lengthy trial. At the same time, I urge everyone to follow the rules so far as the asking of questions and follow them so far as the making of objections is concerned.

The jury will disregard the exchange among counsel. You may inquire further, Mr. Feffer.

Q Did you receive any percentage ownership in New Dimension?

A No.

Q Did Mr. Pflueger, if you know?

A No.

matter is behind us.

MR. ROBSON: I'd be glad for the purpose of trying to avoid this, to indicate to Mr. Feffer what I would consider to be a proper question under those circumstances. "Did you join New Dimensions at any time? "Yes. "When? Would you tell us what the circumstances were or what the terms of your association were?"

MR. FEFFER: That wasn't what Mr. Robson wanted me to ask the jury.

THE COURT: I recognize that. I think what happened is, you did ask a question that is as counsel would have objected to. When one jumps up, he often says the first thing that is on his mind. What he said may not have been the best type of question either. But I always like to think that what we should do in our direct examination is build; build from one question to an answer. Build from the answer to the next question. It can flow and it does flow.

I don't like to interject myself; I know the Court should not. But occasionally, for purpose of clarification, I have done it. I don't know that my method of asking question is the best that was ever created, I'm sure the defendant's counsel would think that there would be improvements that could be made, but I have tried to give

of this new Dimension was in the hands of Deutsch and Duboff. I am not quite sure of whether if any cross examination at all is delivered or held with regard to that factor, that that would be construed as opening up the door here.

THE COURT: That you're going to have to take your chances on. I will indicate to you after the fact if I think you have gone over the line. But I can't really draw a guidline for your cross examination. I only urge you in view of my disposition here, to cross examine with caution, and that of course goes for all three of you.

Occasionally when you have three counsel they look at the thing from different perspectives and this does happen. But if the ball falls between one of the three outfielders here, Mr. Feffer may stretch a single into a homerun. Therefore, I caution you on that. I'm not goirg to give you guidelines, but if that door is open, it may very well be that my ruling will change.

Tentatively, Mr. Feffer, and I will consider the matter during the rather brief luncheon recess that we will have, tentatively my determination on this is to exclude the proffered post-conspiratorial admission of the Messrs. DEutsch and Duboff.

(Luncheon recess taken at 1:00 p.m.)

to which you have just referred?

THE WITNESS: August, September, October.

THE COURT: Not in July?

THE WITNESS: Not in July.

THE COURT: You may proceed, Mr. Feffer.

MR. ROBSON: Your Honor, are you ruling on the objection?

THE COURT: I think Mr. Feffer is aware of what my ruling would be.

MR. FEFFER: Your Honor, it is hard to go into it here, again, but based on conversations we had inside --

THE COURT: I anticipated that some other information would be elicited.

MR. FEFFER: Again, it is difficult to go into, but I thought I made it clear as to the questions I would be asking.

THE COURT: Ask your questionand see what happens.

MR. FEFFER: I just did.

THE COURT: Ask it again.

Q During the time you were at New Dimension Securities, from whom did you receive the instructions, as you indicated were -- that you indicated were given

to you?

MR. SEGAL: Objection.

THE COURT: I'm going to overrule this objection and I am going to ask the witness to tell us the name of the individual or individuals.

MR. SEGAL: Your Honor, I would object, respectfully.

THE COURT: Yes, you have made your objection.

A From Mr. Deutsch and Mr. Duboff.

THE COURT: From both of them, at various times?

THE WITNESS: Yes, sir.

MR. FEFFER: I have no further questions, your Honor, but I would just ask for an instruction at this time with respect to Mr. Cohen.

THE COURT: ABsolutely.

Ladies and gentlemen, the last answer given by the witness is not to be taken in any way, shape or form against the defendant Cohen. Relative to the defendant Cohen, in connection with the last answer, that matter is not to be considered in any way at any time.

MR. SEGAL: Your Honor, at this time I would ask that the answer be stricken.

THE COURT: Denied. I assume you join in that

Q As a result of that offering, they realized a net amount, I believe, of approximately $45,000?

THE COURT: Million, I believe.

Q $45,000,000. The extra zero throws me, Mr. Hurley. It was $45,000,000?

A With two extra zeroes, yes.

Q That shows you that millions are not my bag.

THE COURT: Three is right.

Q You had indicated that prior to becoming the man particularly in charge of the Financial Venture Fund, that you had had some previous experience with Financial Programs, is that right?

A Yes.

Q And Financial Programs, as we use it, is the name of the official fund of which Financial Venture Fund was a part, is that correct?

A It is the management company which manages the four mutual funds.

Q So that in addition to Financial Venture Fund, if we are looking at the funds on the same level, there were at least three others who were under supervision or management, generally, of the Financial Programs?

A Yes.

Q In relation to the other three funds, could you

indicate to us in terms of the money amounts availalbe to those funds where Financial Venture Fund would rest, would it be first, second --

A The smallest.

Q The smallest?

A Yes.

Q What would be the fund that was the largest one?

A Financial Industrial Fund.

Q How much money would be invested in that?

A Roughly $500,000,000.

Q So then it tailed down from $500,000,000 down to your fund, which was about $45,000,000?

A Yes.

Q I take it that there were unique investment objectives for Financial Venture Fund, is that correct?

A Unique in terms of --

Q Well, strike that.

Were there particular financial objectives for which Financial Venture Fund has been organized?

A I believe the charter said that it could own the securities of any company but that it would emphasize unseasoned companies, and what were termed venturesome situations.

A We were, yes. We were.

Q And a certain percentage of the monies generated by Financial Venture Fund, your fund, were paid to Financial Programs because of that service that you could call upon, is that correct?

A Well, that is what was paid for. It was called the management fee.

Q And the management fee was particularly geared to the fact that you culd call on an organization that had a breadth of operation that you yourself couldn't possibly have, is that right?

A Me, myself?

Q You, yourself.

A I was in Financial Programs.

Q I am asking, Mr. Hurley, whether or not Financial Programs, in terms of the management fee which it collected, gave as part of its services a statistical and analytical appraisal of the stock and the bonds and the other evidence of indebtedness which were invested in by the members of its funds.

A Financial Programs provided research and management services to the funds. I worked for Financial Programs, not for the fund.

Q You mean your salary was paid by Financial

Programs?

A Yes.

Q But your job was in this particular fund, is that right?

A But I was brought by the fund from Financial Programs.

MR. SEGAL: I didn't get the last answer.

THE COURT: He was brought by the fund --

THE WITNESS: No, bought, my services, and those of the other people in Financial Programs were paid for by the management fee of the fund to Financial Programs.

THE COURT: I see. Let me see if I can clarify something, if I may, Mr. Segal.

There came a time when you left IBM and you went to work for Financial Programs, is that right?

THE WITNESS: Yes.

THE COURT: When you received your pay, who paid you?

THE WITNESS: Financial Programs.

THE COURT: And then they, in turn, billed the fund and the fund paid for -- reimbursed Programs?

THE WITNESS: Yes.

THE COURT: Is that the way it was all the time

you were with Financial Programs and/or Financial Venture Fund?

THE WITNESS: Yes.

Q Did you have a call or were you able to call upon Financial Programs at any time you wanted to analyze any stocks you were interested in?

MR. FEFFER: Your Honor, I think the problem is that he is calling on other people in Financial Programs.

MR. SEGAL: Very well.

MR. FEFFER: He was part of that organization.

THE COURT: He has indicated that. Maybewe could find out who or what type of people worked at Financial Programs. It is still, to this Court at least, a somewhat amorphous concept.

Q You know when I am talking about Financial Programs I am talking about people, don't you?

A Yes.

Q You had no question in your mind about that, did you?

A Yes.

Q I wasn't talking about a building, was I? Is there an answer to that?

A No, you were not.

Q As a portfolio manager, what step did you take?

A I would take this sheet of paper into our trading department and hand it to, usually, Mr. Hirshheimer.

Q Who is he?

A He did the trading for all four funds.

Q What is his title?

A I believe he was vice president of Financial Programs and the secretary of some of the funds, or director.

Q Was he also on the board of directors?

A I believe he was, but I am not sure.

Q Board of directors of Financial Venture Fund or Financial Programs?

A Or one of the funds. I just don't recall.

Q At any rate, he was in a fairly high spot in the company?

A Yes.

Q Now, you handed this to him and, if you know, what, if anything, was done? Did you discuss the recommendation with him?

A Sometimes I did, sometimes not.

Q Would he do anything, to your knowledge, with regard to your recommendation?

A Sometimes he would, yes.

Q Now, we are talking generally, but I take it that with regard to Richard Packing when you would make your recommendation based upon whatever factors went into the first step, the second step would be then to give it to the trader, Mr. Hirshheimer?

A Yes.

Q Was it done?

A Was it given?

Q Yes.

A Yes.

Q Every time that you purchased any Richard Packing stock, was that first and second step fulfilled?

A I believe so.

Q In the second step, where it is in the hands of Mr. Hirshheimer, can you tell us what, if anything, he does with that recommendation?

A It would depend. Generally he would just be told and put the order in and execute the trade, so to speak.

THE COURT: Was his function merely to execute the trade or did you have discussions with him whether or not the particular stock should be bought or sold?

THE WITNESS: Sometimes we did, but generally he didn't work in that capacity. Sometimes he did, though. It would depend on the stock.

(In open court; jury present.)

THE COURT: You may proceed, Mr. Segal.

MR. SEGAL: Thank you.

Q Mr. Hurley, did you have any research people assigned to you working specifically with you in Financial Venture Fund?

A Towards the last of my time there, yes.

Q What would that be? What would the last of your time have been?

A Well, from like August or so of '69 until I left.

THE COURT: When did you leave?

THE WITNESS: I left in June of '70.

Q From August of '69 to June of '70 you did have people assigned to you to do research, is that right?

A Yes.

Q In addition to the facilities of Financial Programs, is that correct?

(No response.)

Q That is, they gave you a capability in addition to the capability that was given to you by the research department of Financial Programs, is that right?

THE COURT: I am a little confused. He was in Financial Programs all along, according to his testimony, Mr. Segal. I don't know what you mean when you say you,

or they.

Q I am talking about Financial Venture Fund, okay? Financial Venture Fund was the fund in which you were a portfolio manager, is that correct?

A Yes.

Q And attached to Financial Venture Fund there were some people who performed research duties, is that right?

A Yes.

Q In addition to those people attached to Financial Venture Fund who performed duties there were also people in the overall supervisory fund, that is Financial Programs, is that correct?

A We were all in Financial Programs.

THE COURT: Did Financial Venture Fund have any employees?

THE WITNESS: No.

Q Everybody was employed by Financial Programs?

A Yes.

Q But were some of the employees of Financial Programs assigned to other funds?

A Than Financial Venture, yes.

MR. FEFFER: Your Honor, Financial Programs is not a fund, and that is the problem. It is a management program.

THE COURT: No, I think that was made clear.

A She might have.

Q Are you aware of it yourself?

A I believe she did.

Q Did you make the assignment?

A I can't remember.

Q Is it possible that you did?

A It is possible.

Q And is it possible that the assignment for the other individuals who made reports on Richard Packing might have been initiated by you?

A It is possible.

THE COURT: Well, do you know? Anything is possible. Did they or didn't they or don't you know?

THE WITNESS: I don't know. Jim Giasafakis, yes.

THE COURT: What about Conrad and Finch?

THE WITNESS: Conrad I don't believe -- I would say no. Finch I can't remember. I couldn't remember her name the other day. This is the first I heard it.

ke 4B ilm.

el v 1 Hurley-cross 2034

Q Did somebody else ask you about her name?

A Yes.

Q Who?

A Mr. Deutsch.

Q Do you remember if they did a report then?

A I think so.

MR. FEFFER: Your Honor, is that his best recollection? I'm not sure of the nature of the answer.

THE COURT: Let's leave it to Mr. Segal, if he would, to try to clarify it, and if he doesn't, you can on your redirect.

Q Do you have any recollection of -- I'm sorry, your Honor, I was on something else.

What was the question that Mr. Feffer had suggested -- I will carte blanche take it.

MR. FEFFER: I was not certain as to the last answer in view of your Honor's last questions as to whether he did recall as to Mrs. Finch.

THE COURT: I thought he had as to Winifred Finch as well. Do you know or do you recall whether Winifred Finch made any report or reports regarding Richar Packing Company?

THE WITNESS: I believe she did research on it. Whether she made a report, I don't know.

know how many times the other people went.

Q Do you know whether they went any times?

A As I said, Mrs. Finch, I believe, went and Conrad -- I'm working here off the basis of notes that were made by Conrad, and I don't know when they were made. I don't believe he did go. I don't remember.

THE COURT: Do you know of your own knowledge whether he went?

THE WITNESS: I can't recall it.

Q Did you ever use any of the information which was conveyed by these individuals in helping you to determine whether you should be buying any Richard Packing stock?

A Yes.

Q Did you buy Richard Packing stock after seeing the reports or after hearing the reports?

A After hearing them, yes.

Q We have talked a little earlier about the possible review, and we have mentioned in that regard a Mr. Heiderberg and Mr. --

THE COURT: Hirshheimer.

Q Was there anyone else on their level who would review investment recommendations?

A When?

A Usually not. Never.

Q Would you in all instances go to at least -- at least go to Mr. Heiderberg?

A No.

Q Do you know whether or not Mr. Heiderberg reviewed the purchases that were made?

A Yes, he did.

Q How often were those reviews?

MR. FEFFER: Your Honor, are we talking about Richard Packing now or all stock again?

THE COURT: Yes, I should like to know that too, because we did go through this, you know, some time back. You may have forgotten, Mr. Segal, but he said he consulted Mr. Heiderberg, the vice president for investments sometimes in connection with purchases and sales. I took that to be general. I would hope you are now getting to the specifics of Richard Packing Company.

MR. SEGAL: Yes, your Honor.

THE COURT: Very well. Let's see if we can find that out.

Q Do you know whether or not it was Mr. Heiderberg's job to review each and every purchase and sale that was made by the fund?

A I believe it was.

Q And that of course would include the stock of Richard Packing, isn't that true?

A Yes.

Q The fund had certain objectives, that they tried to follow when they made purchases; do you agree with that?

A Yes.

Q Certainly they were trying to buy stocks that they thought would be good investments, isn't that right, even though the might at the moment be kind of cheney or iffy, isn't that right?

A Yes, investment performance was the objectiv .

Q You weren't buying any stocks in order to lose money, were you?

A No.

Q And it was your hope that every stock you'd buy would in fact appreciate in value?

A Yes.

Q And it was your hope, was it not, that you would get in as early a point as possible in the developement of a particular company?

A Yes.

Q That would enable you to buy stock at fairly low prices, or relatively low prices, and realize a divid-

or is quoted somewhere as making a market in an over-the-counter stock.

Q What do you mean by making the market?

A They are prepared to buy 100 shares or sell 100 shares at a stated price.

Q That is your definition of a market maker --

THE COURT: A primary market maker, is the phrase you used.

A They serve the function as a specialist for the over-the-counter market.

Q A primary market maker is one who is specializing in a particular stock, he is on the front of the information on the stock?

A I don't know if that is true. He is the front of the stock?

THE COURT: At least 100 shares?

THE WITNESS: Yes, sir.

Q Well, then he has a stock of stock, isn't that correct?

A Yes.

Q And he has a stock of the stock that you are interested in?

A Could be.

Q So he is the specialist to whom you -- if you

a terrible job, were you?

A No.

Q You were not appointed because you were sick, were you?

A I don't know.

Q Were you appointed because you were unsophisticated?

MR. FEFFER: Your Honor, I think Mr. Segal has to ask that question of people who appointed him, not Mr. Hurley.

Q Do you believe you were appointed because you were unsophisticated in the purchase and sale of securities?

THE COURT: Does it really matter what he believes?

Q You were made the portfolio manager of a $45,000,000 fund?

A Yes.

THE COURT: How many portfolio managers were there for this fund while you were a portfolio manager?

MR. SEGAL: For Financial Venture Fund, your Honor.

THE COURT: Yes.

THE WITNESS: There were two.

THE COURT: Who were they?

THE WITNESS: A man named John Dase.

Q The two of you were the portfolio managers of the fund?

A Yes.

Q Did you consult with Mr. Dase in your decisions?

A Sometimes.

Q Did he consult with you in his decisions?

A Sometimes.

Q So you had a review with Mr. Dase about your decisions as well as with the ohter people we have talked about?

A Depends on what you mean by "review."

Q Did you talk about things, about the investments you were making?

A Yes, sometimes.

Q Did you talk about the investments you were making to other members of the other funds?

A Yes.

Q Did you exchange information with these other members?

A Yes.

Q In fact, wasn't it one of the objectives of the overall program that you would each feed and complement each other in the endeavors in which you were engaged so

long as they were able to be complementary?

A Yes.

Q It is true, of course, that the functions of your fund might be different than the functions of another fund?

A Yes.

Q But, in any event, all of you were in there to make money for the funds?

A Yes.

Q Were they top funds?

A I don't know.

THE COURT: Were they funds which had the same investment objectives as your fund?

THE WITNESS: Yes.

Q Were they funds that were capitalized in approximately the same amounts?

A I believe so.

Q So that you were competing against equivalent funds in both objectives and in the amount of money available, is that right?

A I think so, yes.

Q Mr. Hurley, where did you rank in that rating system?

THE COURT: When?

Q During the period you were drawing salary from the fund.

A Well, it was figured on a February fiscal year, and Venture Fund ranked third.

THE COURT: As of February 3rd what year?

THE WITNESS: No, from March '69 through February of '70 it was the third ranking fund.

Q That would be third ranking among 15 other funds in the country?

identification.)

Q Mr. Hurley, I showyou Mr. Deutsch's Exhibit Y for identification and I will point to a paragraph on page 2 and I will point to a particular line.

(Indicating.)

(Pause.)

Q Having looked at that, does that refresh your recollection that the Financial Venture Fund in March of 1969 had a single portfolio manager and that was you?

A That is what it says here, and it could have been.

Q Does that refresh your recollection?

THE COURT: Does it refresh your recollection?

THE WITNESS: No, it sure doesn't. I don't remember it like this.

Q Does it refresh your recollection that Mr. Dase wasn't even a member of the Financial Venture Fund at that time?

A What I recall is --

Q Does it or does it not refresh your recollection that he was not even a member of the Financial Venture Fund in March of 1969?

MR.FEFFER: I think he has answered the question "No", your Honor.

THE COURT: I thought he had, but I am going to give Mr. Segal another opportunity.

Q Does it?

THE COURT: Does it refresh your recollection?

THE WITNESS: No.

Q Mr. Hurley, were you aware that in March of 1969 the board of directors at their regular quarterly meeting discussed the topic relating to the reconstitution of the Securities Evaluation Committee?

A No.

Q Were you aware also that -- well, were you aware that it was resolved that the function of the investment committee could be best performed by men involved in investment policies?

A Am I aware that that was resolved?

Q Yes.

A No.

Q Were you aware that in March of 1969 Robert Heisderberg and Robert Anton were designated to perform the function of the investment committee?

A No.

Q Were you aware that the evaluation committee would be given day-to-day discretion to make determinations with regard to valuation?

MR. FEFFER: Your Honor, may we have a question put to the witness what the valuation committee is? These questions are obviously read from certain documents, but I think the witness should testify --

THE COURT: Can you tell us whether or not you were aware that there was a valuation committee at Financial Development or in one of the funds?

MR. FEFFER: Is it evaluation or valuation?

THE COURT: I thought it was valuation.

MR. SEGAL: Valuation.

THE WITNESS: I am aware there was such a committee.

THE COURT: It was called the valuation committee?

THE WITNESS: Right.

Q You say you are unaware that its composition was revised?

MR. FEFFER: Your Honor, I don't think there has been any testimony that it even existed and what it is.

THE COURT: He doesn't seem to be very much aware of it and I suggest you have to start with his being aware of its existence and composition before we get to the matter of revision. He doesn't seem to know much about it.

Q Were you aware that there was a Securities Valuation Committee in March of 1969?

2 elmch **** Hurley-cross

THE COURT: It doesn't seem to be refreshing his recollection, Mr. Segal. I suggest you ask your next question.

MR. SEGAL: Very well.

Q Did you ever read a list like this?

A No.

Q You never read this list?

A No.

Q Or any list like it?

A Yes, a list like it.

MR. SEGAL: Your Honor, at this time I would call for any other materials, then, that the Government may have which would indicate or describe the kind of list that Mr. Hurley has.

THE COURT: You know you don't do that, Mr. Segal. That is not the way to defend a case, sir.

Let's go on, please.

Q Mr. Hurley, was there a review of each and every stock that had been purchased and sold by each of the funds?

MR.FEFFER: Can we have a time period for this question?

Q During the period you were there.

A Yes, sir.

Q Was that on the basis of a monthly review or

daily review, or what?

A I would say daily and weekly and monthly.

Q Were there ratings which were attributed to the stocks?

A Such as --

MR. SEGAL: Strike that.

Q Would there be recommendations as to whether or not stocks should be continued to be held or stocks should be sold out?

A Yes.

Q Whose recommendations would that be?

A All different people.

Q People in the Fund?

A Yes.

Q As well as people in Financial Programs?

A The only people in the Fund that could do it were the directors.

Q Would be people in Financial Programs?

A No, would be the directors.

Q At any rate, the directors would review the entire portfolio, you say, on almost a daily basis, or was it a daily basis?

A I believe the directors reviewed it quarterly.

Q Who reviewed it daily?

4 elmch Hurley-cross

A The portfolio managers and anyone else who was invited?

Q Do you know of what this review consisted?

MR. FEFFER Your Honor, could we have this with reference to Richard Packing? We are long past the introduction stages. Is he talking about Richard Packing stock review or all reviews or what?

THE COURT: Let's find out.

There was apparently some sort of stock review that was carried on. You were a portfolio manager. Did you review each stock in your portfolio every day? How did you do it during the time you were there?

THE WITNESS: We would meet every day, and Mr. Hirshheimer would give us what had been bought, what had been sold. I would be there with the other portfolio managers and some of the people in the Fund-- in Financial Programs; Heiderberg, et cetera. And anything that anybody wanted to bring up was brought up. We talked about it. If there was a formal review, an analyst or a portfolio manager could write a report giving a recommendation. It was a free-flowing type of thing.

Q Were you questioned during these review periods by Mr. Heiderberg about the basis of your decisions in either buying or selling stock?

A Sometimes.

Q And were you questioned by Mr. Heiderberg or Mr. Anton or anybody else with regard to the position that you took in a particular stock?

A Sometimes.

Q By "position," I am talking about the quantity of stock that you are holding.

A Yes.

Q Did you in that connection have discussions with regard to Richard Packing stock?

A Yes.

Q As a result of your discussions in March, April, May, June, July, August, September, October, November, December of 1969, did you continue to buy Richard Packing stock?

A As a result of his reviews.

Q And as a result of these reviews --

MR. FEFFER: Your Honor, the question is put before the witness and I think he should answer it.

THE COURT: If you can.

Q If you can, answer it whether or not subsequent to these reviews you continued to buy Richard Packing stock.

A Yes.

just a moment, I want to locate a memorandum.

THE COURT: Yes.

(Pause.)

Q I will move along, Mr. Hurley. I will get back to that.

At any rate, the consideration as to when to eliminate from the fund was always an important consideration as to whether or not to stay with a stock or to try to ride it out or whatever, and these decisions were peculiarly in the hands of the portfolio managers and the board of directors; is that correct?

A Yes.

Q The fund was a public company, owned by members of the public with shares in the public hands; is that right?

A Yes.

Q And as a public company, you had certain obligations of making sure that all of the investments in each of the funds made, or let's stay with Financial Venture Fund, there was an obligation that Financial Venture Fund be constantly reviewed and re-reviewed in order to determine that its portfolio was a live one and a feasible one; is that right?

A Yes.

Q That would be consonant with your objective of trying to make money in the stocks in which you had invested; is that correct?

A Yes.

Q In that regard, I take it that there was a constant flow of information which analyzed what the portfolios were that were held by each of the funds?

A Which analyzed --

Q No, not which analyzed, which laid out what was on there, the prices at which they had been bought, the amount of time that these stocks had been held, and various recommendations as to whether they should continue to be held or whether they should be aborted, they should be added to or they should be eliminated.

A All except for the recommendations, all the other material was there. I'm not aware of the recommendations.

Q Were there meetings at which the portfolios were reviewed, stock by stock, in order to justify or determine whether certain stocks should be held or eliminated?

MR. FEFFER: Could we have a time period for this question, your Honor?

Q During the period you were employed by the Fund.

THE COURT: I would assume, and the jury should also, that when there is a general question like this asked it will relate to the period of the witness' employment at the Fund.

Would you also like that from now on so we can move along? In other words, if he asks you a question, "was this done," and it was done during the period of your employment, you may say so. Then, if the Government wishes on redirect, they may want to get back to this.

MR. SEGAL: Yes.

Q Is that clear, Mr. Hurley? I only want to know what you knew during the period that you were active at the Fund.

So that my question is, did you get information on a periodic basis which laid out the stocks that were held by the particular funds?

A Yes.

Q And were there also meetings held on a periodic basis reviewing each and every stock in the Fund?

A Yes.

Q Were these meetings held by the board of directors first?

A First --

Q Well --

A Before what?

Q Just explain to us what groups, if any, made decisions about either purchasing, adding to or eliminating stocks from the portfolio?

A I think probably the simplest explanation is the board of directors were required -- I don't know if it was by law or by their own rules -- to review the portfolios every quarter, and prior to their review the Fund manager would have to explain and review the portfolio with the president of, for example, Financial Programs, who would then make a report to the board of directors, or it might be Mr.Heisderberg, director of investments, that I would explain my portfolio to and he'd make the report to the board of directors.

Q So that with regard to Richard Packing, it as other stocks were under constant review and reevaluation, is that correct?

MR. FEFFER: Objection, your Honor. That is not the testimony.

THE COURT: Sustained.

Q Was Richard Packing among the stocks that were reviewed in the manner that you described?

MR. FEFFER: Your Honor, are we referring to constantly now? We keep going back to constantly, not constantly -- what time period?

THE COURT: The manner that you have described, since there's been a fair amount of description here, I think makes the question somewhat imprecise and therefore I will sustain an objection. I will permit Mr. Segal to inquire into the area which I believe to be relevant.

Q Can you tell us how often this review took place?

MR. FEFFER: Your Honor, that has been answered. He said it was a quarterly review by the board of directors.

THE COURT: That's what I thought.

MR. SEGAL: Then the objection had been made by the government.

THE COURT: That's what I heard. I think you should work from that point. That is in evidence and I heard it too.

Q On this quarterly review, I take it that each and every stock held in the portfolio of Financial Venture Fund was reviewed by either the board, Mr. Heiderberg, or yourself?

A I know it was by Mr. Heiderberg and myself. Whether the board did it or not, I don't know. I was never present when it was done.

Q But a t any rate, the information in the review that was being given to Mr. Heiderberg, as far as you knew, was for review by the board of directors at their annual -- at their regular quarterly meeting?

A That's right.

Q During the time that you were there did you ever get any recommendations back from any board of directors meeting or from Mr. Heiderberg to sell out the stock of Richard Packing?

A No.

Q There was reported on a weekly basis, also, all of the purchases that had been made by each of the funds, isn't that true?

A I think so. I'm not sure, but I think so.

Q And do you recall that these purchases were listed on memoranda or sheets of paper and distributed to the various funds for their inspection?

A Sometimes they were, yes.

Q At any rate, when you made a purchase that was recorded somewhere in the books of the corporation?

A Yes, sir.

Q And found itself ultimately in a memorandum which would explain your purchases and your sales on almost a weekly basis, is that correct?

A Yes.

Q And you were privy to the purchases and sales of other fund managers as they were privy to what you were doing?

A Sometimes, yes.

Q Was there a formal exchange of information among fund managers as to what they were buying and selling?

A Well, in the daily meetings everything that was bought or sold by the trading department was spoken, so if you were at the meeting you knew it at that point.

Q And there were also memoranda, were there not, of which purchases and sales had been made which were also distributed?

A Yes. I would recieve a memorandum only on my

fund, though, so -- only on Financail Venture Fund. I wouldn't necessarily receive one on the other funds.

Q I take it also that fund managers -- when you had a good item or a stock that seemed to be holding well and doing well, and a stock that you continued to purchase, such as Richard Packing, I take it that there was consultation between or among the managers to determine why it was that you were making those decisions, is that right?

A Yes.

Q And it was incumbent upon you as a part of Financial Programs to explain to your co-fund managers in the other funds the decisional basis that you were using, is that right?

A Yes.

Q And if they made a decision to purchase based upon speaking with you, they were not restricted, were they, from going out -- strike that -- they could make a decision based upon their conversation with you, is that right?

A Yes.

Q They also were able to make independent studies of the stocks that they had talked to you about?

A Yes.

Q And that would be true for Richard Packing too?

A Yes.

Q You kept an inventory of your portfolio in terms of the shares outstanding as to each stock, right?

A Yes.

Q The float?

A Yes, if we knew it.

Q Can you describe for us what the float is?

A Well, I think there are two definitions of float.

Q Very well, whatever your definitions are.

A One definition of float is the total number of shares of the company and subtract from that the number of shares that are not held by the public at large. In other words, the number of shares held by insiders, promotors, founders of the company, and subtract that from the total number of shares and you have the float.

In other words, if there are a million shares outstanding in Company "X" and the president owns 500,000, and that's the only large block that you know of, you can subtract that from the million and say that the float is 500,000.

Q That is one definition. You said that you thought there were two?

A Another definition is that the float is all

that I, on voir dire, elicited the fact that it might have been in February; is that correct?

A That you said that?

THE COURT: No, thatyou said it.

Q That you said it.

A It might have been in February.

Q Do you have any recollection of the fact that it actually might have been in March?

MR.FEFFER: I object, your Honor. I think the tesitmony was that it might have been February 1st.

THE COURT: No, no. "It could have been December, January or February, in that time span."

MR. FEFFER: I am talking about the voir dire questioning, your Honor.

THE COURT: That is right in the voir dire questioning, Page 1834.

The witness may answer the question which has now been asked, and I think it is "might that have been in March?"

MR. FEFFER: I was referring to 1834, Lines 5, 6 and 7.

THE COURT: I know you were, but if you notice the answer of the witness --

MR. FEFFER: February 1st?

THE COURT: No, above on the page.

In any event, the question asked, if if you can answer it, we would appreciate your doing so, "Could the meeting have been in March, if you recall?"

THE WITNESS: It could have, but it is very unlikely that it was.

Q Do you recall ever stating to anyone in the U.S. Attorney's office that the meeting could have been in February or early March, that you first met with Mr. Deutsch?

A I don't recall that.

Q Do you recall ever stating to them that a few weeks after you met with him you received some sort of communication from Mr. Deutsch congratulating you on the opening of the Fund?

A Do I recall saying that?

Q Yes, to anyone in the U.S. Attorney's office.

A I don't recall saying it, but it is what happened.

THE COURT: It is what happened?

THE WITNESS: Yes. I might have said it.

MR. ROBSON: Could I hear that question and answer, your Honor?

THE COURT: Of course.

(Record read.)

Q In fact, you received a letter from Mr. Deutsch, did you not?

A Yes.

MR. SEGAL: Please mark this.

xxx (Defendant Deutsch Exhibit L marked for identification.)

Q Mr. Hurley, I show you Mr. Deutsch' Exhibit L for identification and ask you if you ever received that letter.

A Did I receive this letter?

Q Well, obviously not that particular letter.

Did you ever receive a letter which states what that letter says?

THE COURT: Or did you ever receive the original of that letter.

Q The original of that letter.

A Well, I received a letter but without this, whatever that is (indicating).

THE COURT: He points to what is a typographical error that probably would not appear on the original.

You did receive a letter similar to that?

THE WITNESS: Yes.

MR. SEGAL: I offer Mr. Deutsch' Exhibit L for

as the site; is that correct?

A Yes.

Q And then you went?

A Yes.

Q Now, the float was something that was of some importance to you, was it not, in the way and in the manner in which you made purchases, isn't that correct?

A The float of what?

Q The float of a given stock, like Richard Packing stock.

A Sometimes it would be, yes.

Q Will you tell us why it would be?

A Well, the smaller the float -- at least this is what I believed then -- the smaller the float, the less potential supply there would be of the stock, and so any demand would cause the price to go up and you have to watch it in buying stocks with small floats.

Q Was it a policy of yours to buy stocks with small floats?

A It wasn't so much a policy, it was a fact that the smaller, the unseasoned companies had small floats.

I mean, you don't find the kind of company that my Fund would invest in that had a big float, a big trader, so to speak.

Q You knew when you were buying stocks of Richard Packing that there was a limited float of a sort, isn't that right?

A Yes.

Q And you continued to buy Richard Packing knowing that, didn't you?

A Yes.

Q And it was of some advantage to you to buy it on that basis, wasn't it?

A To buy --

Q To buy the stock in a company like Richard Packing with a relatively small float.

A I could say yes, but I don't know what it means. Relative to what?

Q When you made purchases of Richard Packing stock you knew you were making purchases from a company that had a relatively small outstanding float, is that right?

A That is true.

Q And knowing that, you continued to buy the stock of that company; isn't that right?

A True.

Q And buying stock of a company with a small float was to some advantage to the Fund, was it not?

A Some, yes.

Q What was the advantage?

A The basic advantage is that you could -- I don't know if there was an advantage.

Q You could control the market?

A At the time I thought there was.

Q You could control the market, if you had the stock?

A The market price?

Q Yes.

A No, that isn't so.

Q You could control the demand --

THE COURT: Did you finish your answer?

Q Go ahead. I'm sorry.

A We have to talk about a stock and if we are going to talk about all stocks --

THE COURT: No, we are going to concentrate on Richard Packing, in the time you dealt in that stock.

THE WITNESS: All right.

Q Wasn't it an advantage to you to buy stock of Richard Packing with a small float?

A That depends.

Q When I say "you," I mean the Fund.

MR. FEFFER: I object, your Honor. We are going

Q When you bought the stock of Richard Packing, you knew you were purchasing stock in a company that had a relatively small float, is that right?

A Yes.

Q And I believe I was asking you if knowing that it had a small float, you were making those purchases for a particular reason?

A Buying the stock, yes, I was.

Q And in fact did you at one time say to anyone in the United States Attorney's office that you could buy the stock of a company up to a certain point of the percentages of the company; is that right? Did you have some limitations about how much of a compny's stock you would buy?

THE COURT: This is now any company?

THE WITNESS: Yes.

Q Could you explain what those limitations were?

A Yes. Any stockholding could be no greater than five percent of Financial Venture Fund.

Q Were there any other limitations?

A Yes:

The amount of stock owned in any company by Financial Venture Fund could be no greater than ten percent

of the company.

Q You could buy up to, say, ten percent of Richard Packing stock?

A Of the total stock Richard Packing had, yes.

Q So long as that ten percent of the Richard Packing stock did not represent more than five percent of your total portfolio?

A True.

Q That gave you a fair amount of room as to the number of shares you could buy, didn't it?

A In Richard Packing?

Q Yes.

A Yes.

Q You could have bought just about all the stock Richard Packing had, couldn't you?

A No.

THE COURT: Ten percent.

Q Just ten percent of the stock that they had?

A Yes.

Q But that would represent what portion -- strike that --

THE COURT: I want to understand something. You said you had certain limitations in connection with the purchase of stock?

THE WITNESS: Yes.

THE COURT: I gather that, one, from what you testified was, that you couldn't commit more than five percent of the assets of your fund -- beyond five percent to any one stock?

THE WITNESS: Correct.

THE COURT: And, also, buying that stock, you couldn't have an interest greater than ten percent in the company you were buying the stock in?

THE WITNESS: True.

THE COURT: Those were limitations?

THE WITNESS: Right.

THE COURT: Thank you. You may proceed, Mr. Segal.

Q Did you at any time ever say to the United States Attorney's office, or anyone there, that within these limits you could possibly have purchased all of the float of Richard Packing and you would have loved to do it?

A I made that statement, but I don't recall whether it was with reference to Richard Packing or just stocks or another stock or stocks in general.

Q Was that thought true as to your concept of the purchases you were making of Richard Packing?

go far afield --

Q Were you ever questioned on October 2, 1973, in the U.S. Attorney's office?

A Probably.

Q I show you Exhibit 3509 again and point to the first page and ask you if that refreshes your recollection that on October 2, 1973 you were interviewed in the U.S. Attorney's office?

A Well, what is this (indicating)?

THE COURT: Well, no you don't ask questions at this point, sir. You are required to answer questions.

You may never have seen this before, sir, and he is only showing it to you to refresh your recollection.

Looking at this piece of paper and whatever is on it, does it refresh your recollection that you were interviewed by someone in the United States Attorney's office on October 2, 1973? If it does, tell us, and if it does not, tell us.

THE WITNESS: It does.

THE COURT: Proceed, Mr. Segal.

Q If it refreshes your recollection that on that date you were interviewed by someone in the U.S. Attorney's office, do you recall ever making a statement that you wanted to buy the float because then you could control

Q No way?

A No way.

Q Did the stock ever go up after you bought it?

A Sure.

Q Did you ever encourage other people to buy the stock in order to keep your price up?

A No.

Q Did other fund managers buy the stock?

A In Financial Programs?

Q Yes.

A I believe they did.

Q Did that have the effect of keeping the price up?

A Well, the price stayed up.

Q And did you encourage their buying it in order so that your Fund could look good?

A No.

Q So that your Fund could come in third in the country? Was that one of the reasons why you may have encouraged other fund managers to buy?

THE COURT: Did you encourage other fund managers to buy?

THE WITNESS: Well, if they asked me about it, I would tell them, and they bought. I don't know what "encourage" means.

demand is normally one quotient or one measure of what will make the price go up or make it go down; is that right?

A Yes.

Q And when you are buying the available float within the strictures that you had, did that reduce the supply?

A Sometimes, I suppose it did, yes.

Q Would the reduction of that supply have had the effect of raising the price?

A Not necessarily.

Q You knew that was the effect, didn't you?

A No, I did not.

Q Did you follow the price of the stock?

A Yes.

Q And did the stock go up?

A Yes, the stock went up.

Q Was it to your interest that the price of the stock go up?

A Yes.

Q Because the better your performance, the better money you made?

A You bet.

Q And the higher ranked your Fund would be?

A That's right.

Q So it was to your interest to raise the price of the stock any way that was possible within normal limits, isn't that correct?

A I suppose so, yes.

Q As a matter of fact, did you at one time state to any member of the United States Attorney's Office that the Fund had a direct effect on the market price of the stock?

A I don't remember. I don't recall saying that.

Q Is it possible that you did make such a statement?

MR. FEFFER: Which stock are we referring to, your Honor?

THE COURT: I think that is a fair statement, because we did get away from Richard for awhile.

Is that RichardPacking Company stock, Mr. Segal?

MR. SEGAL: I will put that to the witness.

Q Was it with regard to Richard Packing stock?

MR. SEGAL: Well, your Honor, the witness has not acknowledged he made the statement, first.

THE COURT: Start again, then.

Q Did you ever make a statement to any member of the United States Attorney's Office, or their staff, that

MR.FEFFER: Objection, your Honor.

THE COURT: Sustained.

Q Would the presence of more shares on the market make it more difficult or less difficult to control price, if that was an objective?

MR. FEFFER: Objection, your Honor.

Controlled by whom?

THE COURT: There is an objection to the form of your question, Mr. Segal. I think it's well taken.

I will permit you to inquire into the area, but I would suggest you rephrase your question.

MR. SEGAL: Very well.

Q In the event more stock is out in the market, can you tell us what, if any, effect that would have on the ability to control the price?

MR. FEFFER: Same objection, your Honor.

THE COURT: Yes. I will sustain the objection.

Q Does more stock on the market have any or no effect on price?

A It's unpredictable.

Q It could have a result of depressing the price, is that right?

A It could.

Q Is it harder or is it less difficult to control

"A When fifty portfolio managers, myself included, made a recommendation that a stock should be bought or sold, we could make that recommendation and also recommend through which brokerage house the business should be transacted, and we classified that business in terms of either sales, executions, or research. In other words, we were compensating a brokerage house for selling our mutual funds, that is, that was the sales, or for doing the transaction in an exemplary way, that was the execution, or for research, meaning for bringing us the idea and keeping us up on the companies that we were involved with.

"Q Which classification applied to this purchase?

"A Well, to Deutsch and to Jaffee it was for research, and I was trying, anybody else who gave them business was trying to pay them for their ideas, for their minds."

Do you recall giving those answers to those questions?

A Yes.

Q Was it true?

A Yes.

Q Mr. Hurley, do you remember ever testifying in the grand jury on October 26, 1973 about when it was that you first met Mr. Deutsch?

Mr. Hirshheimer, other people, who made the decision to sell out and they can be called here to ask what they did and how they did it. Mr. Segal is trying to inject a view Mr. Hurley had as to selling or not selling, and that is not relevant.

THE COURT: I have indicated to Mr. Segal on his, what I will call, offer of proof, or an offer to inquire in this area, what my ruling is. Needless to say, he has exceptions, if my ruling prejudices him.

MR. FEFFER: I don't think further questions should be put in that respect, your Honor.

MR. SEGAL: I want to avoid what we talked about yesterday, and the reason I am saying other than business reasons is because I don't want the other thing in here and trying to restrict him to that. If necessary, your Honor, I have to lead him because I don't want him saying what he said.

If I can ask this witness whether he has any idea -- strike that -- if I can ask this witnes s whether he has any knowledge that the sale of the stock was based upon -- by the fund -- was based upon legitimate business reasons, I think I should be permitted to ask that question.

THE COURT: I am not quarreling with you, so far as you go, but I thought you asked that question

already and I thought I heard the answer, the essence of which was that he had no knowledge. That is the basic reason for my ruling.

If you would like the reporter to go back into the record just before the side bar meeting, I think you will find that.

MR. SEGAL: Okay, if he would, your Honor.

(Discussion off the record.)

MR. SEGAL: Let me ask you whether or not it would be permissible to ask these questions, your Honor:

Did this witness ever tell Deutsch that he knew the reason for the sale of the stock by the funds.

Secondly, if he says yes, did he state that it was for other than business reasons? Those are the two questions that I would ask.

MR. FEFFER: He has already stated that he does not know the reasons first hand. He can be asked the basis of his knowledge --

THE COURT: What we are trying to say is that he made a prior negative statement. Now, if they can elicit that at a prior time he told someone else that he knew the reason --

MR. FEFFER: But how did he know, your HOnor?

THE COURT: -- that he knew the reason, they

are able, within limits, I think, to impeach him because he now on the stand has said he doesn't know.

MR. FEFFER: Your Honor, he was asked if the basis of his knowledge, the witness' knowledge, for example, came from Mr. Anton and Mr. Anton told him the reasons, then his knowledge is based on hearsay. They can inquire as to whether or not he knew and if he says no, then they can say "Well, did other people tell you what the reasons are?"

In other words, this question here presumes he had knowledge, knowledge other people told him.

THE COURT: Can you ask the question if he --

MR. SEGAL: "Did you ever tell Mr. Deutsch that he knew the reason?"

THE COURT: "Of your own knowledge"?

MR. SEGAL: That he knew.

THE COURT: It really isn't an -- knowledge is a rather broad subject. I would certainly suggest that I would permit the question if you asked the question did he on a prior occasion to today tell Mr. Deutsch or any other person that he knew of his own knowledge.

MR. SEGAL: Is it all right if I ask, did he ever tell Mr. Deutsch that the reason for the sale of the stock was for other than business reasons?

MR. FEFFER: That gets into hearsay.

MR. SEGAL: No. It goes into whether or not he ever made that statement to Mr. Deutsch.

MR. ORENSTEIN: And that can be answered with a yes or no.

THE COURT: And that's all you want?

MR. SEGAL: Yes, sir.

THE COURT: I will allow it.

MR. FEFFER: If the basis of that is that his knowledge came from hearsay? That's getting around your Honor's ruling.

THE COURT: I will allow the one question.'

MR. FEFFER: If he is asking that one question and he is doing it based on telephone conversations, I am just going to say we have a perfect right to go into the telephone conversation.

THE COURT: Yes, I think he opens the door to that.

MR. SEGAL: I don't agree with that, your Honor, and, your Honor, I am getting tired of the government indicating threats to the continued cross examination. What this does is inhibit cross examination by the introduction of what is extraneous material.

THE COUPT: You have not been inhibited. I have

Q Basically, he was talking to you about the concept; is that right?

A Yes.

Q And the concept sounded interesting to you, did it not?

A Yes.

Q You determined that you wanted to learn more about the company, is that right?

A Yes.

Q At that time, incidentally, which was shortly before you actually had the funds to invest, you anticipated having $45,000,000 that you were going to be responsible for; is that correct?

A I would be responsible for the bulk of it, yes.

Q And that meant you had to find a lot of investments for that $45,000,000; is that right?

A At least 20, if I was going to spend it.

Q At least 20 investments?

A Yes, sir.

THE COURT: That is, you could not invest more than 5 percent of your fund in any one stock, and if you invested less than 5 percent, there would be more than 20?

THE WITNESS: Right.

Q You were interested in locating as many good potential investments as possible and as rapidly as possible?

A Yes.

Q You were also looking for small companies with speculative but very high potential?

A Yes.

Q Of course, you recognized at the time that small companies with very high potential were also very risky companies; is that correct?

A Yes.

Q And you also recognized at that time that small companies, particularly new companies, had potential which was dependent very heavily on what happened over a period of time; is that correct?

A Yes.

Q In other words, nobody could really predict with any certainty what was going to happen to these small companies, isn't that correct?

A Generally -- I mean, yes, it was risky.

Q With respect to Richard Packing specifically, you were aware of the fact that this was a new, untried concept, the circus wagon approach; is that correct?

A I had only seen it one other place.

Q Would you tell us to the best of your recollection the conversation that took place between you and Mr. Deutsch. The first time you heard from Mr. Deutsch he got on the phone --

A Basically it was --

Q I don't want basically. I want to know your best recollection. How did Mr. Deutsch introduce himself? I assume he said "Hello, this is Bernard Deutsch." Then what did you say? And then what did he say?

A I can't remember what he said. I can remember what happened, but his exact words --

Q Let's see if I can refresh your recollection. Did he say, "I understand you're interested in Richard Packing stock"?

A He might have.

Q Did he say, "What would you like to know about Richard Packing Company?"

A (No response.)

Q You don't remember.

A I have already said I can't remember his exact words.

Q Do you remember whether he said any words to that effect, like, "What would you like to know?"?

A Yes, that was possible.

A I don't know if he did or not.

Q Did you ask him whether or not they had taken any steps yet with respect to any of these franchises, like building them?

A I think I just accepted what I was told. I mean, I was hearing the story for the second time, the first in detail.

Q You were aware, however, that the company was just getting started in the franchise field, were you not?

A Yes.

Q And that they really had not yet had any opportunity to demonstrate whether their ideas would work?

A Yes.

Q So you understood when he was giving you earning statements, estimates, what he was doing was assuming success and this taking place as they were planned in order for those estimates to be achieved?

A Yes.

Q You didn't understand that he was representing to you or guaranteeing to you that those earnings were going to be actually realized?

A I'm sorry?

Q Did you understand him to be guaranteeing to you

or representing to you that he knew those earnings would in fact be reached?

A No.

Q About how much of the conversation was devoted to Richard Packing stock during that roughly one hour meeting?

A Maybe five minutes or so.

Q During that meeting he also mentioned other companies with which he had some relationship or interest, is that correct?

A Yes.

Q Am I correct that what he told you in effect was these were a number of companies that you might have some interest in?

A Yes.

Q Did he at that time urge you to buy any stock in any of these companies?

A I think he said that the stock could do well.

Q I beg your pardon?

A I believe he said words to the effect that these might be good investments for the fund.

Q He was in fact recommending to you some stocks for your consideration?

A Yes.

Q After you purchased or placed the order for that 5,000 shares, did you take any steps to investigate Richard Packing and learn any more about the company?

A I talked with Mr. Deutsch.

Q Other than conversations with Mr. Deutsch, did you take any steps to check out the company?

A I, personally?

Q You personally --

A Or the funds?

Q I said, did you take any steps to check out the company, and that would include, did you ask anybody working with you or fo you to do it.

A Yes.

Q Will you tell us what the next step was that you took with respect to checking out Richard Packing?

A I think mainly it was a study of McDonald's Corporation, just to see if the ideas and fundamentals that I had heard about Richard Packing gibed with that.

Q When did you do that?

S Some time after that purchase.

Q At or about the time that you made the purchase of the initial 5,000 shares, did you discuss that purchase with anybody at Financial Programs?

A Yes.

Q When, and with whom?

A Well, just before the fund bought it I discussed it with Mr. Anton.

Q Can you tell us what your conversation was with Mr. Anton?

A Basically, that some shares are available, did he want some, did he want to buy some for his fund.

Q Did you tell him anything about the company?

A Well, I believe I showed him that recommendation sheet and we talked about it before.

Q I show you what has been marked Government's Exhibit 33 and ask you if that is the recommendation sheet you are referring to?

A Yes.

Q That sheet was prepared on or about February 1, 1969, is that correct?

A Yes.

Q Before you bought that 5,000 shares, did you obtain any authorization from anybody who was above you in the company?

A To do so?

Q To do so, yes.

A Well, my recommendation sheet, when it was submitted, if it was accepted, that was authorization.

THE COURT: Who did you submit it to?

THE WITNESS: Mr. Hirshheimer.

THE COURT: He was the trading officer?

THE WITNESS: Yes, but he was also a vice president.

Q Was that the procedure, that you would prepare a recommendation sheet and then submit it to Mr. Hirshheimer?

A No, no. The other recommendation sheet is the little slip where I wrote out how many shares of which stock and at what price, from where, to buy when.

Q I'm talking about this recommendation sheet, the one marked --

A No, that was for my own use.

Q That was for yourown use?

A Yes.

THE COURT: But you did show that to Mr. Anton?

THE WITNESS: I believe so.

Q There was another recommendation to purchase which you submitted to Mr. Hirssheimer when you decided to buy a certain number of shares.

A I think that was the title on it, but it might not have been. It was the buy slip, or sell slip.

Q You would make a decision to buy a given number of shares of stock and send it down to Mr. Hirshheimer for

him to go out and buy the stock and if he actually went out and bought it, that would be considered acceptance of your recommendation, is that correct?

A Yes.

Q Did you indicate on the slip you sent to Mr. Hirshheimer the place that you wanted to pay?

A You mean in that instance, that first --

THE COURT: The first 5,000 shares, start there.

Q Generally, was that the practice, that you would indicate a price?

A For any stock?

Q Yes.

A Generally, yes.

Q Do you recall whether you did with respect to this 5,000 shares?

A I believe I did.

Q This 5,000 shares, of course, was a public offering which was coming out at a particular price, so that you would have known what the price was exactly?

MR. FEFFER: Objection, your Honor. That is not the evidence.

THE COURT: It is true, it isn't. I will sustain the objection to form.

of the assets of the Fund and 10 percent of the shares of the company.

Q Other than those general limitations on the amount with respect to the percentage of the Fund, is it your testimony that you are not aware of whether or not there were any limits placed on a regular basis on how many shares of each stock the Fund was authorized to buy?

A I was not aware.

Q It was your understanding that you could buy as many as you wanted to, as long as MR. Hirshheimer didn't object or Mr. Heisderberg didn't come down to you and object, so long as it didn't exceed 5 percent of the Fund, about $2,200,000; is that right?

A Roughly, yes.

Q And so long as it didn't exceed 10 percent of the outstanding stock of the company, which in Richard Packing would have been 50 or 60 thousand shares; is that right?

A Right.

Q Between the meeting that you had with Mr. Deutsch, when he came out to Denver, and the time you bought the 5,000 shares, did you have any further conversations with Mr. Deutsch?

A Yes.

Q About Richard Packing?

A Yes.

Q Were they by telephone?

A Yes.

Q Will you tell us, to the best of your recollection, the substance of those conversations?

A He was passing me information on Richard Packing Company and we were talking about how the company was doing, what it could possibly earn, how many franchises were sold or close to being sold, what people were on board with the company or projected to be on board, what areas of business it would be in.

Q After you purchased the 5,000 shares, you continued to buy stock on a very regular basis for some period thereafter, did you not?

A Yes.

Q Do you have any recollection, as you sit there now, what the amounts of those purchases were?

A In shares?

Q Yes.

A From when to when?

Q Well, at any particular time, do you have any recollection? Do you know how many you purchased by the end of March?

A 15 or 20 thousand.

Q Does the number 16,800 sound correct?

A It sounds close.

Q Do you know how many shares were outstanding in the form of registered stock,as of the end of March?

A Roughly, a half-million.

Q Registered?

A Registered.

Q Isn't it a fact that there were only 110,000 as of the end of March that were registered?

A Not to my knowledge.

Q Did you ever see the offering circular, which is Government's Exhibit 5-B, Mr. Hurley?

A Yes.

Q That was sent to you when you bought the 5,000 shares, wasn't it?

A I don't know.

Q But you have seen it?

A Yes.

Q Did you read it when you got it?

A I have read it sometime, yes.

MR. ROBSON: Will your Honor bear with me for a moment?

THE COURT: Yes.

(Pause.)

Q I call your attention to the introductory statement on Page 2, and particularly to the language starting with the sentence, "There were 100,000 shares of the company owned by the public," et cetera, in that paragraph, and ask you whether that refreshes your recollection that as of the time of this public offering, in March 1969, there were only 100,000 shares owned by the public?

A Well, there were roughly 100, 110 thousand shares owned by the public, but that is not the same as registered.

Q What did you understand me to mean when I said "registered"?

A Stock that was registered with the Securities and Exchange Commission.

Q And weren't these 100,000 shares registered with the Securities and Exchange Commission?

A Yes, and so were all the rest, I assume.

Q You assume all 500,000 shares of the company's stock were registered?

A Yes.

Q You do not know that publicly held stock is the only stock that is registered stock of a corporation? Is that what you are saying?

A I don't know that what?

Q That publicly held stock is the only stock that is registered stock?

THE COURT: That publicly held stock is the only stock that is registered stock; is that your question?

MR. ROBSON: Or that can be registered stock.

A Publicly held stock is what?

Q Is the only stock that can be registered stock.

A What do you mean by publicly held stock?

Q Are you testifying now that you do not understand what I mean by publicly held stock, Mr. Hurley?

A No, I am not.

Q The answer my question.

A I can't answer it unless I understand it.

Q Are you saying you do not understand what I mean by publicly held stock? Is that what you are sitting there telling me?

A No.

Q If you do know what I mean by publicly held stock, would you please answer the question?

A Would you ask it again, please?

MR. ROBSON: Will the reporter read the question?

THE COURT: Read Mr. Robson's last pending

question.

(Question read.)

A No.

Q That is not what you are saying?

A That is not what I am saying.

Q Then what are you saying?

A I am saying that registered stock and public held or trading stock are not mutually exclusive, that of the shares held by Milton Cohen, some of them could hav e been registered. He could have bought them on the open market and they would be registered. Some of the shares that he held could be registered and subject to a letter.

Q When you read the offering circular -- let's not try to fence with each other -- when you read the offering circular, did you not know that 100,000 shares of stock were in the hands of the public and virtually all of the balance was held by Mr. Cohen and his brother and was registered and couldn't be sold publicly?

A Yes.

Q So you knew that there were only 100,000 shares plus the 10,000 covered by their offering circular that could be traded publicly, subject, possibly, to a letter from Mr. Cohen's attorney with respect to a small portion; is that correct?

MR.FEFFER: Your Honor, could we have a time setting for this, as to when he read the document in question so we know what we are talking about?

THE COURT: I think that is a fair request in view of the area being inquired into.

MR. ROBSON: I am asking whether he knew at the time he purchased these 5,000 shares that there were only 110,000 shares being traded publicly.

A Yes.

Q So when you bought 16,800 shares, and that is what the records show, if the Government will accept that figure, which I have gotten from records the Government gave me, when you bought 16,800 shares during the month of March, you at that point had approximately 16 percent of the publicly traded shares; is that correct?

A That would be.

Q We have been talking or you have been asked many questions about the float, what is or what is not the

float. Let me ask you this question:

Is it not a fact that for all intents and purposes, back in March of 1969, what you meant and what you considered to be the float were the maximum number of shares which were then trading publicly, in this case 110,000 shares?

A Yes.

Q Did you keep track, from March 1969 through April 1970, of what percentage of that 110 thousand shares were owned by Financial Venture Fund and the other Financial Program funds?

A No.

Q Did you ever have any knowledge of what percentage was owned by those funds?

A I could have figured it out, yes.

Q But you never did?

A I might have.

Q There were two stock dividends paid, or stock splits, is that right, each for 25 percent, in July and August 1969; is that right?

A I don't know. I think so, yes.

Q Will you accept my statement that that is a fact?

A Yes.

THE COURT: Splits or dividends, stock dividends?

THE WITNESS: They are equivalent to me, sir.

THE COURT: You recognize them to be roughly the same thing?

THE WITNESS: Yes.

Q Will you also accept my arithmetic, two 25 percent stock dividends on 110,000 shares of stock makes a total of 171,875, give or take five?

A Yes.

Q Did you just compute that in your head?

A No.

Q It would have embarrassed me if you did. It took me five minutes.

That would be the maximum number of shares at any time from March '69 to April '70 that were being traded by the public, until Mr. Cohen had sold a small portion of his shares; is that correct?

A Or unless he sold a large portion.

Q You knew there was a restriction, did you not, that no control person could sell more than 1 percent of his stock during any one-year period?

A At that time I did not.

Q You didn't know that?

A No.

Q Did you ever know that as of April 1970, out of the 171,875 shares which I just described to you, 166,000, or more than 95 percent, were owned by the three Financial Program funds?

MR. FEFFER: I object to that, your Honor. That is inaccurate.

THE COURT: If the witness knows, he will say he knows.

If he doesn't know, he doesn't know, and it's not going to be in evidence.

A Could I hear it again?

MR. ROBSON: If your Honor please, I can go through this on a very lengthy procedure unless I can get possibly Mr. Feffer to either agree with me or review my figures. I made these computations from Government records.

THE COURT: Why don't you and Mr. Feffer just step over to the side for a moment? We will all wait. And if you show Mr. Feffer what you have and he shows you what he has, you may be able to reach some mutual agreement as to ownership at a certain time.

MR. FEFFER: Let me suggest this: For the purpose of these questions, I have no objection to what figures Mr. Robson has, and it will be quicker for everybody. We can correct whatever errors there are later, I think.

MR. ROBSON: I can't guarantee that I didn't make any errors in arithmetic, but I can't be too much off.

MR. SEGAL: Your Honor, I ask that those statements about it's not correct figures be stricken.

THE COURT: All right. We will strike it. It's not relevant. The jury will disregard it.

Do you have the question in mind?

THE WITNESS: No.

THE COURT: Do you wish to rephrase the question or do you wish it read back?

MR. ROBSON: I can rephrase it.

Q Did there come any time when you learned that the three funds, Financial Venture Fund, Financial Development Fund, and Financial Industrial Fund, had between them or among them a total of 166,000-odd shares out of the 171,875?

A Yes.

Q When did you realize that?

A Probably at the time it happened.

By the way, it's Financial Dynamics Fund, not Development.

THE COURT: Venture, Dynamic and Industrial are the three key words for the three separate funds.

Venture, Dynamics and Industrial?

THE WITNESS: Yes.

Q When we use the word "float," so there won't be any confusion in anybody's mind, all we really mean is the supply that is available for sale; is that not what we generally mean?

A It might be what you generally mean.

Q Okay. Let's talk about what you generally meant back in March of 1969 when you used the word "float" in March of 1969. What did you mean?

A The amount of stock, which was a number you could never really know for certain, but the amount that would have any chance at all of being on the market as either a sell or a buy.

Q Just like copper or steel, the amount of the product available; is that correct?

A Yes.

Q That's all we are talking about?

A That's right.

Q You have heard of the law of supply and demand, haven't you?

A Yes.

Q You have heard that expression?

A Yes.

Q What do you understand that to mean?

A That supply and demand are related by a function.

Q What do you understand that to mean insofar as prices are concerned of anything?

A There is a price function that relates to supply and demand.

Q What is that price function?

MR. FEFFER: Your Honor, I am going to object unless he shows the relevancy between this witness' views of supply and demand and the issues at hand.

MR. ROBSON: I think there is a very substantial relevancy, if your Honor please.

THE COURT: I will accept the representation by counsel and let him inquire. I would suggest supply and demand in general is terminology known by the Court and the jury.

I think we might go on from that point.

MR. ROBSON: Let me see if I can simplify it.

Q Is it not generally understood by you and by people at large, so far as you know, that the greater the supply, generally, the lower the price; the greater the demand, the higher the price?

A In general?

MR. FEFFER: Objection, your Honor.

Q Generally.

THE COURT: Mr. Robson' don't they interrelate, as a matter of fact? I mean, you could have a great supply and no demand, or a modest supply and do demand and you'd have the same thing.

Q The greater the supply with relationship to the demand, the lower the price; the lower the supply with respect to the demand, the greater the price; is that right?

A Depending on the product that you are talking about.

Q As a general rule, if something has any value, the more there is around, generally the lower the price will be; the rarer it gets, the greater the price; is that not true?

A Depending on what you are talking about.

Q We are talking about stock, okay?

A Okay.

Q Is it not true that the more stock there is around for sale, the lower the price will tend to be, generally?

MR. FEFFER: Your Honor, I am going to object.

THE COURT: Yes, I will sustain the objection

because I don't think you can discuss supply independent of demand, Mr. Robson. I think that is one of the fallacies here.

MR. ROBSON: Your Honor, in this situation, I think we can, that is why I would ask your Honor's permission to explore this a little bit further.

THE COURT: On that representation, I am going to permit it.

Q Is that not generally true, all other things being equal, that if a product has a certain amount of inherent value, that the more there is available for sale, the lower the price is going to be?

A Could be.

Q Thank you.

Did you not know that as the Funds were buying up almost 95 percent of what was generally understood to be the publicly traded stock, that that was going to naturally cause the price to rise?

A No.

Q Did you expect it to cause the price to rise when you and your Fund and the other Funds bought 95 percent of the stock?

A That might be a tendency, yes.

Q Did you expect it to rise when you bought all

of those shares?

A I suppose I did, yes.

Q And in fact it did rise because you bought all of those shares, did it not?

A That is your conclusion. I don't know.

Q You wouldn't draw that conclusion?

A No.

THE COURT: May I ask you this, sir:

As the Funds bought, did the price rise?

THE WITNESS: The price of Richard Packing generally rose throughout the whole time.

Q Did you discuss Richard Packing with the portfolio manager of Dynamics Fund at any time?

A Yes.

Q Who was that?

A Bob Anton.

Q You told us about a conversation with Mr. Deutsch at which Mr. Anton was present, and you told us about a conversation thereafter with Mr. Anton in which you indicated that you thought he might be interested in buying some Richard Packing stock at or about the time you bought the first 5,000 shares.

Can you tell us about the next time you spoke with Mr. Anton about Richard Packing stock?

A Probably the day after the Fund had bought it.

Q Do you recall the conversation?

A To the effect of, "Here it is and it's doing well."

Q When was the next time you spoke about it, or, let me ask you this, because I don't want you to go through a series of a hundred daily conversations.

THE COURT: This is a fellow he spoke with every day, wasn't it?

MR. ROBSON: I realized that.

Q Are you aware of the extent to which Mr. Anton purchased Richard Packing stock for his Fund, Financial Dynamics?

A Generally.

Q Did Mr. Anton consult with you or discuss with you his purchases prior to making them in Richard Packing?

A Sometimes he did; sometimes he didn't.

Q Do you recall any specific occasions when he discussed with you the purchases he was proposing to make?

A No.

Q Did you ever urge Mr. Anton to buy stock in Richard Packing?

A Well, I told him about it.

to ask a couple, fine, but I have been listening carefully and so far you have done your own cross examination, and I would suggest that as you launch into this area you not ask the same questions which Mr. Segal asked yesterday and possibly this morning.

MR. ROBSON: I think your Honor knows me better than to think I am going to go through the whole routine.

THE COURT: That is why I am giving you latitude.

Q Do you remember the question?

A No.

Q Was there a procedure within the organization of Financial Programs for some sort of periodic valuation of the portfolio of each fund?

A Yes.

Q How often was that? Was that a quarterly valuation?

A It could have been. It could have also been monthly.

Q And that procedure consisted, did it not, of merely adding up the value of each stock in the fund and comparing it with what it was the month before or the quarter before, is that correct?

A The procedure of --

Q The valuation procedure was just a matter of mathematics, was it not?

A Yes.

Q In other words, if you had 10,000 shares of Richard Packing on April 1st and the market price was $30 a share, they would multiply 30 by 10,000 and do the same for every other stock, right?

A Yes.

Q And then when they did it again on May 1st, if Richard Packing was up to $35 a share, they would multiply 35 by 10,000, is that correct?

A Yes.

Q So of course, in terms of your performance, the higher the price of Richard Packing every month the better your performance appeared, is that correct?

A Everything else being equal, yes.

Q Everything else being equal. Of course Richard Packing and all the other stocks. So that if your buying of Richard Packing or the buying by Mr. Anton of Richard Packing for his fund had the effect of increasing the price, that would also improve your performance record, would it not?

A Everything else being equal, yes.

Q And weren't you pleased with the fact that these other funds were buying this stock and keeping the price up?

MR. FEFFER: Objection to the form of the question, your Honor.

THE COURT: Sustained as to form.

Q The fact that these other funds were buying this stock was assisting the performance record of your fund, was it not?

A Everything else being equal, yes.

Q Because as they bought, the price kept moving up, didn't it?

A The price did keep moving up, yes, and they were buying, yes.

Q And it made you look very good, didn't it? Made you look like a real hotshot, didn't it?

A You will have to ask someone else.

Q Did you think that you looked like ahotshot?

A No.

Q Made you the third best fund of 15 or 16 you were competing with, didn't it?

A Over a year.

Q In fact, you didn't care anything about Richard Packing or what the company was doing so long as the stock

moved up, isn't that true?

A No.

MR. ROBSON: Your Honor, if at this point it is convenient for a recess, I will have a chance to go through my notes. I am not too far from the end.

THE COURT: Yes. We are just about midway through the afternoon and it would be a convenient time to take a ten minute recess, ladies and gentlemen.

Please do not discuss the case among yourselves and please continue to keep an open mind on all facets of the case.

The jury is excused for a ten-minute recess. The jury may stand down.

(Recess taken.)

THE COURT: You may proceed, Mr. Robson.

MR. ROBSON: Y our Honor, just so there won't be any misunderstandings, after some conversations with the attorney for the government, I would like to have the record indicate that apparently some stock was sold in addition to the stock that was publicly traded in March, so that as of April the amou[illegible] which the funds owned of the total available public shares was about seventy-five percent, not ninety-five percent.

THE COURT: Very well.

MR. BLOCK: April of what year?

MR. ROBSON: 1970.

THE COURT: What I will do is strike through my notes here and you said it is seventy-five percent, or approximately seventy-five percent?

MR. ROBSON: Yes.

THE COURT: That is in the form of a stipulation, is it?

MR. ROBSON: Yes.

THE COURT: You agree on that?

MR. ROBSON: Yes. The exact figure is not important. I accept the government's figures. My computation was somewhat off.

THE COURT: That is seventy-five percent of the publicly held or outstanding?

MR. ROBSON: Of the publicly traded stock.

THE COURT: I assume, Mr. Block and Mr. Segal, you join in the stipulation?

MR. SEGAL: Yes.

MR. BLOCK: Yes.

THE COURT: Just for clarification, and this is a matter of mathematics, more than anything else, as I understand it, as of approximately April, 1970 the various funds which would be Financial Venture Funds, Financial

Q In substance, you did tell him you were glad the other Funds did not sell because that would cause the price to drop?

A That's part of what I said, yes.

Q I now call your attention, in the same document, to the bracketed portion, which is about six or seven lines from the top, the last three lines, and ask you whether that refreshes your recollection that you told the United States Attorney's Office that Mr. Anton would have discussions with Deutsch but would act on the basis of your figures and his own analysis?

A I see that here, but I don't remember saying that.

Q I then call your attention to the three lines which have a line alongside of them, a little further down, and ask you whether that refreshes your recollection that you knew that the fact that the other Funds would purchase stock would cause the price to be driven up?

A That is part of what we talked about.

Q That is what you told the United States Attorney, in Substance, that you knew when other Funds purchased that would drive the price up?

A That is part of what I said, yes.

Q But that is a correct statement, is it not?

A As words, yes.

in this indictment?

A Yes.

Q Are you a co-conspirator?

THE COURT: Sustained.

MR. FEFFER: First of all, it is not an indictment, your Honor.

MR. ROBSON: It is an information.

THE COURT: You objected, is that right?

MR. FEFFER: Yes, your Honor.

THE COURT: Sustained.

Q When you finally reached the point where you decided you were interested in taking a large position in Richard Packing stock, you told Mr. Deutsch you wanted him to show you, I think were your words, all the stock he came across.

A Yes.

Q By that, did you mean you wanted him to let you know whenever he found stock for sale, because you would be interested in buying it, probably?

A Yes.

Q And, in fact, Mr. Deutsch did let you know whenever he was aware of any stock that was availabe, did he not --

MR. ROBSON: I withdraw that.

7 rmmch Hurley-cross

Q Mr. Deutsch frequently let you know that he had stock available, of knew of stock that was available?

A Yes, sur.

Q During the period from March 1969 through April of 1970, were you aware of the fact that many investors in the market followed carefully the nature of fund purchases?

A Yes.

Q Were you aware of the fact that these investors followed fund purchases because they felt that if the funds were interested, that meant there was a good likelihood the stocks would go up and they wanted to buy them, too?

A Some would have that opinion, yes.

74a

Q So, in the purchasing of stocks for a fund, was it not a common practice to attempt as much as possible to conceal the fact that the fund was purchasing in order to keep the price from going up too fast so that the fund could not acquire the stock?

MR. FEFFER: I object to the form of the question.

THE COURT: Sustained.

Q Did you ever discuss with Mr. Deutsch the desirability of buying carefully, so that it would not become public knowledge too early that the fund was buying heavily?

A I might have; probably did.

Q Incidentally, you knew that Jaffee & Company, Mr. Deutsch's firm, did not trade or make a market in Richard Packing, didn't you?

A Yes.

Q Therefore, you knew that when they bought stock for the Fund they would have to go to other brokerage firms that did make a market, did you not?

A Yes.

Q Did you know that or did Mr. Deutsch ever tell you that there were a number of brokerage firms with which they did business through whom they could acquire

the stock without revealing the nature of their customer, or the identify of their customer?

MR. FEFFER: I object to the form of the question, your Honor.

THE COURT: Sustained.

Q Did you ever have any conversations with Mr. Deutsch about the manner in which Jaffee would go out into the market and try to acquire the stock?

A Probably did.

Q And do you recall whether in any of those conversations Mr. Deutsch explained to you that he would be using other firms with which he had a good relationship in order to try to acquire the stock at the best possible price?

A Did he say that to me?

Q Yes, sir.

A I believe he did.

Q You knew also, did you not, that because of Jaffee & Company's reputation that stock prices would tend to move up if the public ascertained that Jaffee & Company was interested in acquiring stock?

MR. FEFFER: I object to the form of the question, your Honor.

THE COURT: Sustained.

MR. FEFFER: Absolutely not, your Honor.

MR. ROBSON: I object to this on the same basis I objected previously, but even more strenuously.

THE COURT: You have your objection on all grounds and it is overruled.

(In open court.)

DIRECT EXAMINATION

BY MR. FEFFER:

Q Mr. Papworth, how are you presently employed?

A As a portfolio manager for --

THE COURT: Gentlemen, please. The witness is under examination and I don't want colloquy back and forth at the table. If you wish to communicate with your counsel, make up a note.

You may proceed. Le me have the answer read back, please.

(Answer read back by the reporter.)

A -- Loomis, Sayles & Company, a national counseling firm headquartered in Boston.

Q What are your present responsibilities with them?

A Portfolio manager.

Q How long have you been with them?

A Approximately five and a half year.

Q That would be from what date?

A The latter part of August, 1968 to the present.

Q When did you leave school?

A June of 1966.

Q Which sc hool was that?

A University of Southern California.

Q What was your first job after finishing school?

A A trainee in the Trust Department of Security Pacific National Bank in Los Angeles.

Q What were your responsibilities with that bank?

A My responsibilities were learning all facets of the Trust Department. I was employed in each department of that Trust Department learning about the administration of trusts.

Q How long did you remain with the Security Pacific National Bank?

A Approximately 17 months.

Q That would take us to what date?

A August of 1968.

Q Is that the time when you went to Loomis, Sayles?

A Yes.

Q In the fall of 1968, August, September, thereabouts, what were your responsibilities with Loomis, Sayles?

A I was in the informal training program. I was

an assistant to a portfolio manager there.

Q How old were you at that time?

A 26.

Q Do you know a Bernard Deutsch?

A Yes.

Q Do you see Mr. Deutsch in this courtroom?

A Yes, I do.

MR. SEGAL: Conceded, your Honor.

THE COURT: The identification of Mr. Deutsch is conceded by counsel.

Q When did you first meet Mr. Deutsch?

A In the fall of 1968.

Q Where did this take place?

A At a restaurant in Los Angeles.

Q Who was present?

A Myself, Mr. Deutsch, Mr. Hugh Deane and Mr. Paul Pflueger.

Q Can you tell the Court and jury what Mr. DEutsch said during the course of this luncheon?

THE COURT: This conversation will be offered subject to connection relative to Mr. Cohen and Mr. Duboff.

A The discussion at the luncehon was that Mr. DEutsch said that he was connected with Jaffee & Company

in New York, he talked about several securities that Jaffee & Company had been involved in, several smaller securities they had been involved in, and he discussed certain securities that had done extremely well in the market place, smaller securities.

He said he was now working on a number of other ones that he felt had a great deal of promise, one of which was Richard Packing Corporation.

Q Did he say anything about Richard Packing at that meeting?

A Just a broad outline of the company's business. He stated that he knew the existing management of the company, said it was a somewhat small regional meat packing company, he said they were going to go into the franchise business on a national scale.

Q Do you know Milton Cohen?

A Yes.

Q Do you see Mr. Cohen in this courtroom?

MR. BLOCK: Identification conceded.

THE COURT: It is conceded the witness knows Mr. Cohen.

Q When did you meet Mr. Cohen for the first time?

A In February or March of 1969, is my best recollection.

Q Can you tell the Court and jury where you met Mr. Cohen?

A Yes, I met him at a hotel in Los Angeles.

Q Which hotel was that?

A The Century Plaza Hotel.

Q Who else was present at that meeting?

A Mr. Deutsch, Mr. Cohen, myself and, to the best of my recollection, Mr. Deane and Mr. Pflueger.

Q Can you tell the Court and jury what transpired at that meeting?

THE COURT: This conversation or conversations if they took place will be offered subject to connection as to Mr. Duboff. He is not there.

THE WITNESS: No, sir.

A At the meeting with Mr. Cohen we discussed again in more detail Richard Packing. I was given a brochure dealing in some detail with the planned franchising program of the Circus Wagon chain of restaurants and we also had -- I also discussed with Mr. Deutsch certain --

MR. SEGAL: Your Honor --

Q What did Mr. Deutsch say to you?

MR. SEGAL: May we have who particular discussions are with or whether this is a joint or communal discussion?

THE COURT: Yes. You mentioned a number of people. You said you discussed Richard Packing Company and you were givena brochure. At that time, who was present?

THE WITNESS: My best recollection is Mr.

Cohen, Mr. Deutsch -- Mr. Cohen and Mr. Deutsch definitely, and there were other people and I believe it was Mr. Beane and Mr. Pflueger, but there were definitely other people.

Q After receiving this material, this brochure, what if anything did Mr. Deutsch say?

A He discussed in more detail what Richard Parking was currently doing. He mentioned they had recently completed an acquisition of a meat packing company in New York --

Q What was the name of that company, if you recall?

A F & T Meat Packing. He stated that they were moving ahead rapidly with their plans for the national franchising program for Richard Packing and he gave me certain earnings estimates for the year ended June 30, 1969.

Q What were they, if you recall?

A To the best of my recollection, somewhere in the neighborhood of 35 cents to 50 cents.

Q After this meeting, what if anything did you do?

THE COURT: Who was that who spoke to you?

THE WITNESS: Mr. Deutsch.

THE COURT: And Mr. Cohen was present?

THE WITNESS: Yes.

THE COURT: But Mr. Duboff was not?

THE WITNESS: No, sir.

Q What if anything did you do following this meeting?

A Well, after the meeting I prepared a report dealing with Richard Parking Corporation.

Q What was the purpose of this report?

MR. SEGAL: Objection.

THE COURT: Yes.

Q How did you prepare this report?

A I prepared it by using -- since I had been in the business, I had seen many such reports prepared by securities firms. I used one or two of these reports, possibly several reports, in order to gain a format for what I was trying to do. I had never prepared a report like this from scratch and so I used other reports and thought that it would be an experience that would --

MR. SEGAL: Objection.

THE COURT: Yes. What he thought is not going to be --

A Well, I prepared it as an educational process --

MR. SEGAL: Objection, and I ask that be

stricken.

THE COURT: Yes, strike it. The jury will disregard it. You prepared a report and you testified this was the first report you ever prepared from scratch.

THE WITNESS: Yes, sir.

THE COURT: Next question.

Q When did you actually prepare this report?

A In March of 1969.

Q Did you do the work at Loomis Sayles?

A I did the work partially there, partially at home, I did the work in my spare time.

Q I am going to direct your attention back to that meeting you referred to at the hotel. Was there any --

MR. SEGAL: Objection.

THE COURT: Let him ask the question.

MR. SEGAL: This is leading. The question is, was there any conversation --

MR. FEFFER: I will rephrase the question.

Q Do you know of a Regulation A offering of of Richard Packing Company?

A No, sir.

Q Have you ever heard of a Regulation A offering of Richard Packing Company?

A No, not until recently.

Q After you prepared this report, what did you do with it?

A After I had finished the report, I showed it to some friends in Los Angeles and I sent a copy to Mr. Deutsch and Mr. Cohen.

Q Did you give a copy to Loomis Sayles?

A No, I did not. It was not an authorized project, it was a project I did in my spare time, entirely on my own.

Q Did you have an occasion to speak with Mr. Deutsch after sending a copy of the report to him?

A Yes, I did.

Q Approximately when was that?

A Within 30 days thereafter.

Q This would be sometime either in March or April of 1969?

A Yes. It was probably within a week of the preparation of the report, but sometime in that time frame.

Q Was this a telephone conversation?

A Yes, sir.

Q Please tell the Court and jury wnat you said to Mr. Deutsch and what Mr. Deutsch said to you during

this telephone conversation.

THE COURT: This will be offered subject to connection as to the Messrs. Cohen and Duboff.

MR. BLOCK: May we have a time fixed on that?

THE COURT: He said within a week. He indicated the report was prepared in March of 1969 and within a week thereafter he had the telephone conversation with Mr. Deutsch.

Can you be any more specific than that date-wise?

THE WITNESS: No, sir.

A Would you repeat the question?

THE COURT: What was the substance of the telephone conversation you had with Mr. Deutsch sometime in March of thereabouts 1969?

A In regards to the report, I simply asked Mr. Deutsch if he had received the report and he said yes. I asked him if he had read it and he said yes. I asked him what he thought of it and his statement was that the report was good.

Q Did you have occasion to speak with Mr. Cohen?

A Yes.

Q Approximately when did this conversation occur?

A At a similar point in time, within a few days after the preparation of the report. After the report was finished, I mailed each a copy and I called them both to get their reaction.

Q What did Mr. Cohen say to you and what did you say to him on the telephone?

A I asked him if he read it. He said yes. I asked him what he thought of it and he said it was good.

MR. FEFFER: Your Honor, may I ask defense counsel for the exhibit, the Papworth report?

THE COURT: Of course. That is the Papworth report, Defendant Deutsch Exhibit A in evidence.

Q I show you Defendant Deutsch's Exhibit A and ask you to look at it and to identify it, if you can.

A To the best of my knowledge, this is the report.

Q Can you tell the Court and jury who you gave copies of this report to?

A I gave copies to Mr. Deutsch and Mr. Cohen. I showed a copy to a few people in Los Angeles, but it wasn't prepared to be distributed and -- it was something I did personally, had nothing to do with my firm, and not distributed either inside or outside my firm.

Q Mr. Papworth, I am going to refer to certain sections of this report and ask you who provided the information for it and when.

The first paragraph --

MR. ROBSON: If your Honor please, I object to this because it is going to be a very obviously leading -- it is in evidence and the witness testified about certain conversations and the witness can be asked for whom he obtained information and what information he obtained which went into the report. I think to go through this report sentence by sentence and saying "Who told you that" is leading.

MR. FEFFER: I am going to ask where the information came from. The report is in evidence and I would like to read certain sections and ask him where the information came from.

THE COURT: The objection is overruled.

Q The first paragraph, I believe the second or third sentence reads: "On June 30, 1968 the company reported sales and net income of approximately $850,000 and $85,000 respectively. For the year ending June 30, 1969 sales and earnings of $1.25 million and $150,000 were expected. The growth of sales and the high profit margins appear to be indicative of above-average management.

Who supplied you with that information?

MR. SEGAL: Objection.

THE COURT: Did anyone supply you with that information?

THE WITNESS: Mr. Deutsch.

MR. SEGAL: Does that include the last sentence, that the growth of sales and the high profit ma-gins --

THE COURT: Of course it is cross-examination, Mr. Segal.

MR. FEFFER: I will ask that, your Honor.

Q The last sentence "The growth of sales and the high profit margins appear to be indicative of above-average management," who provided you with that?

THE WITNESS: I was working from the format of an existing report and it was my own. I included that in order to make the format appear consistent.

THE COURT: Let's be very careful from this point on that you answer accurately and if a portion was provided by one person and another portion added by you on your own, I want you to say so. It is most important.

THE WITNESS: Yes, sir.

THE COURT: Don't lump things together.

THE WITNESS: No, sir.

THE COURT: Very well.

Q "Richard Parking Company is headed by Milton Cohen, who has substantial experience in real estate development as well as meat processing. A recent check with the New York bank indicates his character and credit are good and his personal net worth is in excess of $1 million."

Did you make such a check with any New York bank?

A The only check I ran on Mr. Cohen was a Dunn & Bradstreet report that I obtained from my bank.

Q What is a Dunn & Bradstreet report?

A That is an agency which acquires credit and, in some instances, character reports on individuals.

Q The next paragraph, "The company recently entered into an agreement to acquire F & T Meats of New York who are substantially in the same business as Richard Packing. Sales and earnings of $1.2 million and $80,000 respectively are anticipated for June 30, 1969. F & T had sales of $900,000 for the year ended December 31, 1968. Richard plans to issue a total of 20,000 shares of F & T depending upon the latter's achieving certain sales and profit levels in the future. Contacts indicate that the principals of F & T are

experienced in the meat processing business and Milton Cohen indicated the central reason for the acquisition was F & T's capable management."

I want to refer to the entire paragraph.

Can you tell me where that information came from?

A It came from both Mr. Deutsch and Mr. Cohen, the majority, and it initially came from Mr. Deutsch, the financial.

Q Under earnings estimates there is a sentence that reads as follows: "I have run what I consider thorough checks on all the principals of Richard Packing and Status Marketing, and I consider their projections to be reliable."

What checks did you run on the principals of Richard Packing and Status Marketing?

A The only check I ran was a Dunn & Bradstreet check.

Q I am going to the next page, at the beginning of the first full paragraph, or second full paragraph.

"By 6/30/69 there should be at least 15 Circus Wagon restaurants in operation and Bill Ward estimates he would have a minimum total of 30 sold."

Who provided you with that information?

A My best recollection is Mr. Deutsch.

MR. FEFFER: No further questions, your Honor.

THE COURT: Very well. You may inquire, Mr. Block.

MR. BLOCK: May we have a minute, your Honor?

THE COURT: Certainly.

(Pause)

MR. ORENSTEIN: No questions, your Honor.

THE COURT: Very well. Mr. Segal, you may

inquire.

MR. SEGAL: Your Honor, I would ask for at least a ten minute adjournment.

THE COURT: You shall have five, and we shall await your pleasure.

MR. SEGAL: Your Honor, while the jury is waiting?

THE COURT: That's correct. We await your pleasure, sir.

MR. SEGAL: Your Honor, I am asking for this adjournment because Ijust learned of this witness this morning. tne government --

MR. FEFFER: Objection --

THE COURT: Please, there will be no speeches. You know the government has no obligation to provide you with the names of witnesses in this district prior to their taking the stand. You wish ten minutes, you shall have it.

Ladies and gentlemen, I will excuse you from the room; I suggest you take your ease in the jury room. Please do not discuss the case among yourselves, and keep an open mind on all facts of the case.

(The jury left the courtroom)

(Recess)

Q You were not asked to prepare it by a certain date, were you?

A No.

Q These friends that you sent it to, were these people who were in the financial community or involved in work like your own, investment work?

A Yes, similar, roughly similar.

QA At the time you were with Loomis, weren't you?

A Yes, sir.

Q Could you briefly describe to us -- incidentally, Loomis, Sayles is S-a-y-l-e-s?

A Yes.

Q It is not S-a-l-e-s?

A Yes.

Q Sayles is a name of a man?

A Yes.

Q What kind of a company is that?

A Investment counseling.

Q IN Boston?

A Yes, headquartered in Boston, with a small Los Angeles office.

Q When you sent a copy of the report to Mr. Deutsch do you recall you sent a cover letter with the report?

A I don't recall, but I certainly could have.

(Defendant Deutsch's Exhibit N, marked for identification.)

Q I show you Mr. Deutsch's Exhibit N and ask you if you can identify that?

A Yes, I think that's probably correct.

Q Is that your signature?

A Yes, it is.

MR. SEGAL: Your Honor, I offer Exhibit N.

THE COURT: Show it to counsel.

(Pause.)

MR. FEFFER: No objection, your Honor.

MR. ROBSON: No objection.

MR. BLOCK: No objection.

THE COURT: Received.

(Defendant Deutsch's Exhibit N for identification, received in evidence.)

Q Mr. Papworth, this Exhibit N is sent on the stationery of Loomis, Sayles & Company, from the Los Angeles, California office?

A Yes, sir.

Q And your salutation on that letter was Loomis, Sayles & Company, Inc., and then your full name, Michael T. Papworth?

A Yes.

Q That was the letter that you sent in which you transmitted the copy of the report you had made to Mr. Deutsch on Richard Packing?

A Yes.

MR. BLOCK: What was the date of that letter?

MR. SEGAL: March 19, 1969.

THE COURT: Incidentally, would that date Mr. Segal just gave you refresh your recollection as to the date on which you sent a copy of your report to Mr. Deutsch?

THE WITNESS: Yes, sir, obviously.

Q When you made that report, I take it that at the time you were investing for customers at Loomis, Sayles, were you not?

A No, I did not have that responsibility at that time.

Q Were you able to talk to people at Loomis, Sayles about investments?

A Oh, certainly.

Q You consulted with people who did make investments?

A Yes, sir, I did.

Q Did you in conjunction with anyone else manage any portfolios of any individuals who were clients of the

firm?

A I was an assistant to a portfolio manager at that time, yes, I was.

Q So that your recommendations would be weighed by whoever your chief was at the moment?

A Yes.

Q In making any purchases?

A Yes.

Q Subsequent to writing this report, you did purchase for some clients -- you or your firm did -- some stock of Richard Packing, isn't that true?

A I did, but the firm did not purchase any stock.

Q When you said you did, you mean personally?

A Yes.

Q Did you ever recommend to anybody in tne firm?

A I mentioned I did think it was a good firm -- no, I never recommended the purchase of it, I just talked about it. Our research effort is carried on entirely out of Boston. We have no analysts in any regional office.

Q When you wrote that report I take it you just kept it in your file in Loomis, Sayles?

A For a while, yes, sir.

Q Was that file available to be read by anybody in Loomis?

A No.

Q Did your chief who did the investing in your particular area read the report? Did you show it to him?

A Yes, I did.

MR. SEGAL: No further questions, your Honor.

THE COURT: Mr. Robson.

MR. ROBSON: Just one, your Honor.

CROXX EXAMINATION

BY MR. ROBSON:

Q Mr. Papworth, in one of the paragraphs read to you, Mr. Papworth, there was a statement that Will Ward estimates something or other. Did you ever speak to Bill Ward?

A Yes, sir.

Q Is that where you got the estimate that you refer to in there?

A Would you please read the estimate?

Q I'm sorry --

THE COURT: Something about a minimum total of 30 units.

Q "By 6/30/69 there should be at least 15 Circus Wagons restaurants in operation and Will Ward estimates he

THE COURT: All right, gentlemen, you heard that, no 3500 material.

O S C A R F E L D H A M E R , called as a witness, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. FEFFER:

Q Mr. Feldhamer, how are you employed?

A Well, I have a meat business on Atlantic Avenue in Brooklyn.

Q What is the name of that meat business?

A F & T Meats.

Q Do you know a Mr. Deutsch?

A I do.

Q Do you know Mr. Cohen, a Mr. Cohen?

A Well, I don't know Mr. Cohen enough to say that I know him. I met him a few times.

Q Do you see Mr. Deutsch in the courtroom?

A Yes.

MR. SEGAL: Conceded, your Honor.

THK COURT: It is conceded that Mr. Feldhamer knows Mr. Deutsch.

Q Do you see Mr. Cohen?

MR. BLOCK: I will concede that, your Honor.

THE COURT: It is conceded Mr. Feldhamer knows Mr. Cohen as well.

Q You testified you are with a company called F & T Meats.

A Right.

Q How long have you been with that company?

A Well, since its origin.

Q When was that, sir?

A 1959, 1960, I believe.

Q What is your position with that company?

A Well, I am the president of this modest outfit.

Q Does anyone else hold office in the company beside yourself?

A My borther, who is the secretary.

Q Did you have occasion to speak with Mr. Deutsch about your company?

A Well, I had occasion to speak to Mr Deutsch --

Q When was this?

A Oh, I don't know -- exactly recall the time, because --

Q Can you approximate, to the best of your recollection, the year? '68, '69.

A Around that time, possibly.

Q Where did you see Mr. Deutsch at that time?

A Well, I was taking a couple of days off and sometime during the middle of the week --

Q Where did this meeting occur?

MR. BLOCK: Please allow him to finish.

A It occurred in a restaurant in Manhattan.

Q Which restaurant?

A Seigels, I believe.

Q Who else was present?

A Mr. Cohen was there and Mr. Deutsch was there.

Q. Can you tell the Court and jury as best as you can recollect what Mr. Deutsch said and what Mr. Cohen said?

THE COURT: This conversation will be introduced as to Mr. Duboff subject to connection. You may proceed.

MR. ROBSON: Your Honor, I would like on the record again to object to the testimony as completely irrelevant.

THE COURT: Same ruling.

Q Go ahead, Mr. Feldhamer, as best you can recollect the conversation that occurred.

A Well, the crux of the meeting, or, shall we

say, the purpose of the meeting --

MR. BLOCK: I object to it. It is asked for the conversation, your Honor.

THE COURT: You came to the restaurant, sat down and talked to Mr. Deutsch and Mr. Cohen. What did you talk about?

A Selling F & T Meats to a company.

Q Did Mr. Deutsch make an offer?

A Yes, I believe there was an offer.

MR. BLOCK: I object to the leading, your Honor.

THE COURT: Yes. What was said?

MR. BLOCK: He asked for the conversation.

A They offered to buy the company.

Q Was any amount discussed, money?

A Well, I think at the time -- it is a long time ago, you got to remember that, and, you know, I think it was something --

Q As best as you can remember.

A I think there was a deal of 20,000 shares of stock.

Q Of which company?

A Richard's Packing.

Q What did you say?

A Well, at the first meeting it was in abeyance, pending consideration.

Q Was there a second meeting?

A Yes.

Q How long after the first meeting was that?

A I don't really remember, because time is so vague to me at this time.

Q Was it days, months?

A I could have been months, but I couldn't swear for it.

Q Who was present at the second meeting?

A My brother, Mr. Deutsch, I think my accountant was there too.

Q Anybody else?

A I don't recall now. It might have been Mr. Cohen, but --

Q You don't recall.

A I don't recall.

Q What happened at that meeting?

MR. SEGAL: Your Honor, may we get a time?

THE COURT: He has done the best he can. Let's try the place.

Q Where was this meeting?

A It was in a restaurant that is no longer in

business any longer.

Q What was the name of that business?

A The name is Vegetarian Restaurant, Eastern Parkway.

THE COURT: In Brooklyn?

THE WITNESS: Yes.

Q What is your best recollection as to the year, '68, '69?

A Again, I have to refrain from giving a definite answer because I don't know -- I know this proposition was considered for quite a while.

Q At the second meeting what took place, what happened?

MR. BLOCK: This is subject to connection, your Honor?

THE COURT: Yes. There seems to be a question as to whether Mr. Cohen was there and Mr. Dubroff was not there. I will take it subject to connection as to both those gentlemen.

Tell us what was said at that meeting when Mr. Deutsch was there and others may have been there, your accountant was there. What was said?

A Well, the deal, essentially, was an interesting one -- if you want to know the details --

THE CO[illegible] really want to know what was said.

Q Just what was said, as best you can recall?

A I don't know what you people want to hear --

THE COURT: After you ordered your meal, if you did, just tell us in the words that you can recall, the substance of the words, what you said and what the other gentlemen said.

Q About this agreement.

A Again, there was this proposition --

Q What did you say about this proposition?

A Well, at that time -- I am sort of a conservative person and I didn't want to go for all stock, I wanted some money, some cash, and while I didn't declare it at the time, perhaps, I told my brother that --

MR. BLOCK: I object to it.

THE COURT: Did you tell your brother whatever you are about to tell us in front of Mr. Deutsch or did you go off to the side with your brother?

THE WITNESS: No, I don't think there was any definite -- you know, I think there was some -- perhaps there could have been some understanding that the deal could go through, but because of the money factor, I know that I rejected it later on.

Q You rejected the deal at that meeting?

A Right.

Q Did you ever sign any agreement with Mr. Deutsch or anybody else?

A No.

MR. FEFFER: No further questions.

MR. BLOCK: May we approach the side bar?

THE COURT: Yes.

(At the side bar)

MR. BLOCK: If your Honor please, in the first instance, I move to strike the witness' testimony as being so vague as to be unworthy of acceptance in a court of law. He has testified about events that he cannot even place as to whether they were in '68 or '69 and I therefore move to strike it, because it is so vague.

THE COURT: I think your objection really goes to the weight to be given his testimony and for that reason I deny the motion to strike.

MR. BLOCK: Then, if your Honor please, I would like to inquire of the government if there is any 3500 material on this witness.

THE COURT: I made that request of the government on the record a few moments ago. You may not have heard it. A representation was made that there was no

A I was called on the telephone last week.

Q That is the first time you ever got any call from anybody connected with Uncle Sam?

A Right.

Q About Richard Packing, is that right?

A That's right. In fact, I had forgotten all about Richard. It's a long time ago.

Q I don't blame you. On the basis of your recollection, you had a pretty good business there in Brooklyn with F & T back in 1968 and '69, and I hope by the same token that you have a pretty good business today. So let me --

MR. FEFFER: Your Honor, let's get an answer.

THE COURT: Wait. Let's get an answer.

MR. BLOCK: I will withdraw it and start over.

THE COURT: The jury will disregard the question.

Q Did you have a good business back in '68 and 69?

A All businesses are considered good relatively.

Q No, no, but I'm talking about did you have about a million dollars of sales?

your Honor (indicating).

THE COURT: You proved it.

THE WITNESS: See the thumb?

THE COURT: Yes, I do.

Q Your brother Dave, is he pretty much the salesman and the outside man?

A He is the brains.

Q Wasn't your brother Dave conducting these negotiations that you have told us about with Messrs. Deutsch and Cohen, wasn't he doing it more than you were? He was having meetings and telling you about the meetings, isn't that right?

THE COURT: I think you have two questions there, Mr. Block? Do you want to withdraw the first? He was having meetings and telling you about them.

Q Yes.

A If there were any other meetings besides the two that I was present at, there might have been others and Dave did inform me as to, you know, possibilities of selling, for which I was all in favor of but I don't want to work any more, as much, let me put it that way.

Q And the deal fell apart because you wanted cash and all they were willing to give was 20,000 shares of Richard Packing stock, is that correct?

out your business on certain terms?

A Well, tentative is a broad word in some ways.

Q You were in the middle of the negotiations, they had made an offer and you had not turned the offer down.

A When two people get together to make a deal, naturally there is an intention of making a deal.

Q And during the time that you and Mr. Cohen and Mr. Deutsch were talking there was an intention of making a deal, wasn't there?

A Yes.

Q It was just a matter as to how.

A I would say so.

Q Was it Dave's intention that, or did he desire to take the stock deal?

A I don't know exactly what was on my brothers mind. I do know that he was negotiating. As I stated to you, I rejected it becaues on the basis of what I told you.

Q Ultimately you only rejected it because you wanted cash and not stock instead?

A Correct.

Q Dave was intent to take the stock?

A Well, you are asking me what was on my brother's

the mentioning of the Reiss Bank, et cetera. I see it here. There is testimony on an affirmative basis.

Needless to say there are other aspects of this testimony which I would regard as germane, without any doubt.

MR. ROBSON: I was referring only in my statement to that portion of the testimony dealing with that --

THE COURT: Let me ask this question of the government: Relative to the matters of the Reiss Bank Swiss relationship, do you expect to get to that early in your direct examination?

MR. FEFFER: His direct examination is very short, your Honor, and I reconsider putting this man on the stand if I am told I can't put this in. We had a question mark in terms of whether we were going to call Mr. Leff to the stand because he was primarily dealing with Dimension 5. But your Honor, even assuming that it hadn't been gone into on cross-examination the government is certainly entitled to show, to corroborate by circumstantial evidence or otherwise, something that is charged in the indictment.

We have charged in the indictment that Mr. -- and in the subsequent information, that the monies went

DIRECT EXAMINATION

BY MR. FEFFER:

Q Mr. Leff, how are you currently employed?

A I am a cable television executive.

Q Are you an attorney by background?

A Yes, I am.

Q Do you know an individual by the name of Jack Hurley?

A Yes, I do.

Q Can you tell the Court and jury when you first met Mr. Hurley?

A I first met Mr. Hurley at the Sands Hotel, in Las Vegas, at a meeting arranged by Mr. Deutsch.

Q Do you recall the approximate date of that meeting?

A Approximately in April of 1969.

Q Did there come a time when you actually met with Mr. Hurley and Mr. Deutsch in Las Vegas?

A Yes, I did.

Q Was anyone else present, to the best of your recollection?

A To the best of my recollection, there was another gentleman from the Denver fund, who I best recall to be a Mr. Anton.

Q It is correct, is it not, that Mr. Hurley and Mr. Anton were both from Denver, is that correct?

A That's correct.

Q Can you tell the Court and jury what Mr. Deutsch said during the course of that meeting, please?

A This Mr. Deutsch --

MR. BLOCK: Subject to connection, your Honor.

THE COURT: Yes. Mr. Duboff was not there either?

MR. FEFFER: That's correct, your Honor.

THE COURT: All right, this conversation between the witness and Mr. Deutsch will be received subject to connection as far as Mr. Cohen and Mr. Duboff are concerned.

MR. SEGAL: Your Honor, an objection as far as Mr. Deutsch is concerned, unless it is represented that this subject matter is with regard to Richard Packing.

MR. FEFFER: Your Honor, I think we went through that at the side bar.

THE COURT: I gather it is what you outlined, and of course you have a continuing objection, Mr. Segal.

Now, we will get to the conversation, if we can.

A Mr. Deutsch primarily introduced me to the

gentleman from the fund, asked me to describe the nature of the proposed business that I had intended to form.

Q What was the name of the company that you were intending to form?

A I believe at that time it was called Jaspin, soon to be known as Dimension 5.

Q Go ahead.

A I was asked to describe my approach to the motion picture and production business. I did so in a very, as I recall, brief period of time, possibly no more than twenty minutes. I was then cordially invited to leave the room so that Mr. Deutsch and the gentelman from the fund could confer.

Q When did you next see Mr. Deutsch?

A I recall about, perhaps, twenty to thirty minutes later, when he came downstairs to the Sands Hotel Casino and he extended his hand in congratulations and told me he had persuaded the gentleman from the fund, or, specifically, Mr. Hurley, to advance private placement of $400,000 of Dimension 5 to my company.

Q Did you have occasion to speak to Mr. Deutsch later on the same subject, the private placement for your company?

A One conversation that most vividly stands out

in my mind --

MR. SEGAL: Objection, your Honor.

THE COURT: Yes. The jury will disregard that. You had a conversation with Mr. Deutsch after the one you have just described.

THE WITNESS: Yes, Your Honor.

THE COURT: Wouldyou tell us when it occurred?

THE WITNESS: In June of 1969.

Q This was by telephone, I take it?

A It was by telephone. I had received a letter proposing to--

MR. SEGAL: Objection, your Honor, as to what this witness received.

THE COURT: Yes. You apparently have background as an attorney, and, therefore, I will ask you to just answer the questions as they are asked.

THE WITNESS: Yes, your Honor.

THE COURT: I think the question presently pending is, did you have a conversation with Mr. Deutsch on the telephone.

THE WITNESS: Yes.

THE COURT: And tell us the substance of it.

THE WITNESS: I called Mr. Deutsch to register my displeasure about the --

MR. SEGAL: Objection, your Honor.

THE COURT: Yes.

MR. SEGAL: I ask that be stricken.

THE COURT: The jury will disregard it.

Q What did you actually say to Mr. Deutsch?

A I told Mr. Deutsch the agreement I received was not satisfactory -- the agreement from the fund I had received memorializing our proposed arrangement was not satisfactory to me. I felt it did not describe sufficiently what the nature of my busienss --

MR. SEGAL: Objection.

Q Is this what you told Mr. Deutsch?

A Yes.

MR. SEGAL: If the witness, who is a professional, can just relate the conversation - -

MR. FEFFER: He is doing that.

THE COURT: I had some difficulty with it too, Mr. Segal, frankly. Don't editorialize. Try to give us words and substances.

THE WITNESS: May I tell you one thing, your Honor:

Although trained as an attorney, I have not practiced for many, many years.

THE COURT: I understand. Let's try when you

are describing either a telephone or in person conversation to give us the two sides of the conversation, what he said, what you said, or the substance thereof.

A The substance was that I told Mr. Deutsch I was displeased with an agreement received by the Denver fund, displeased because I felt it did not properly attempt to reflect what it was I wanted to do with this company, what the capitalization was going to be, and I felt that as a former attorney, it does show the kind of diligence from a company that I would have wanted to be in business with.

Q What did Mr. Deutsch say to you?

A Mr. Deutsch said "Don't concern yourself about that. They are not betting on the horse, they are betting on the jocket. If I chose you and selected you, that is good enough for them.

"I have done very, very well for the fund and they trust my judgment. And I will subsequently work out whatever details you feel are required."

Q Are you familiar with a company called Richard Packing Company?

A I am.

Q How are you familiar with that company?

A It was one of the stocks in my portfolio that was purchased for me by Mr. Deutsch and Mr. Duboff in the Jaffe & Company affiliation.

Q Do you see Mr. Deutsch in the courtroom?

MR. SEGAL: Conceded, your Honor.

A Yes.

THE COURT: It is conceded the witness knows Mr. Deutsch.

Q I am going to direct your attention to the fall of 1969. Did you have an occasion at that time to speak with Mr. Deutsch about Richard Packing Company?

A Yes, I did.

Q Where did this conversation take place?

A In Mr. Deutsch's home.

Q Do you recall who was present during the course of the conversation?

A My wife was present, Mr. Deutsch's family. As I recall, Mr. and Mrs. Phil Feldman were present. Mr. Fedlman was associated with Dimension Five on a consultant basis.

MR. SEGAL: Your Honor, may we have a time?

THE COURT: I have it as the fall of '69. If the witness can do better, let's try.

Q Do you have in mind a more specific date, approximately when this occurred?

A I can only tell you it was still warm enough for us to have had a barbecue outside. So I would assume, as I recall, that it was not in the later part of the fall or early winter.

Q Early fall, 1969?

A That would be my best recollection.

Q Can you tell the Court and jury what you said to Mr. Deutsch and what he said to you?

A In dinner conversation I mentioned how remarkable it seemed to me that although the stock market was then declining rather precipitously, all of the securities

which Mr. Deutsch had purchased for me had maintained the price level.

Q What did he say?

MR. SEGAL: Your Honor, may we have who is present during this conversation?

THE COURT: I thought we had that. His wife was present, who else?

THE WITNESS: His wife, his children were present, and it may be that his mother, mother-in-law was present, but I am not at all certain.

THE COURT: Were other people there at the time?

THE WITNESS: I don't recall, your Honor.

Q What did Mr. Deutsch say to you at that point?

A He said "Why are you so surprised? When the supply of the stock has been dried up," you know -- "I have been able to place the major portion of the supply of the stock with the Denver funds and other funds and when there are no shares available on the open market, it is not at all surprising that the price level would be maintained."

Q Do you know a company called New Dimension Securities?

A Yes, I do.

Q When did you first hear of that company, approximately when?

A Approximately in the fall of '69.

Q Can you tell the Court and jury with any more specificity as to the date?

A I'm sorry, I cannot.

Q It would be the fall of 1969? That is your best recollection?

A Yes.

Q Where did you hear of New Dimension Securities, and from whom?

A I heard from Mr. Deutsch, at my home, that he was intending to establish on the west coast a division of a company that he told me had been started in New York. I don't recall whether he then identified it as New Dimension, and he said that he wanted to establish an over-the-counter securities company to do business on the west coast.

Q Did he say anything else in this regard?

A He asked -- in fairness, I think I volunteered to try to help him in introducing him to several, perhaps, influential people on the west coast which would help launch his endeavor more favorably.

Q Did you do that, Mr. Leff?

MR. FEFFER: Yes. I didn't want to lead this witness into July 30. Can I direct him to July 30 and ask him if he say Mr. Deutsch on that occasion?

MR. SEGAL: No, your Honor. We are talking about a specific information period and this may become very important as to whether it is July 30 or August 1 or 2.

MR. FEFFER: May I ask if following this conversation he had an occasion to see Mr. Deutsch in New York?

MR. SEGAL: Sure, that is okay, but I think dates are critical, at this point.

THE COURT: In any event, I think we have mooted your objection?

MR. SEGAL: Yes.

(In open court.)

BY MR. FEFFER:

Q Mr. Leff, following this meeting that you have pointed to at Dimension Five with Mr. Hurley, in June of 1970, did you have an occasion to see Mr. Deutsch thereafter?

A Yes. I came to New York and met --

Q Can you tell the Court and jury approximately when you came to New York City?

A I recall it as being on June 29.

Q Did you see Mr. Deutsch in New York at that time?

A I did.

Q Where did this meeting take place?

A At Jaffee & Co.

Q Who was present, if you recall?

A My attorney, Mr. Saul Prior, Mr. Deutsch. I recall Mr. Hurley and I am not certain of anyone else being present.

Q Can you tell the Court and jury what took place and specifically what Mr. Deutsch said to you at this June 30 meeting?

A June 29 meeting.

Q I'm sorry, June 29 meeting.

A Mr. Deutsch had arranged -- Mr. Deutsch had arranged for a loan of a hundred thousand dollars to Dimension Five. He presented me with three --

MR. SEGAL: Your Honor, I have a continuing objection, particularly based upon the latest side bar conference. The ground raised there particularly.

THE COURT: Very well.

MR. ORENSTEIN: Your Honor, with respect to the defendant Cohen, an objection as to relevance.

THE COURT: Very well. That is overruled. Mr. Robson, you want to join in the objection?

MR. ROBSON: I object of course to the basis I stated already, and that it be taken subject to connection.

THE COURT: Needless to say, as to Mr. Cohen and Mr. Duboff, they were not at this meeting, were they?

THE WITNESS: Your Honor, my best recollection is that Mr. Duboff was not there, but I am not at all certain of that. I am very vague on it.

THE COURT: Since the witness is vague, I am going to instruct the jury that relative to Mr. Cohen and Mr. Duboff, this is subject to connection. I think you had told us that Mr. Deutsch said something about having arranged for a hundred thousand dollars. Why don't you pick it up at that point.

THE WITNESS: He had arranged for a hundred thousand dollars to be loaned to Dimension Five. He presented me with three bank drafts. I explained the urgency of the need for the monies, and he -- it was suggested, I forget by whom, that we immediately hand-deliver the bank drafts to the international department of Chase Manhattan Bank, which was in the vicinity.

I dictated a letter to Mr. Deutsch's secretary, I believe she hand-delivered the bank drafts with instructions that they be processed for collection and had proceeds deposited to the account of Dimension Five in Beverly Hills.

Q You mentioned bank drafts. What type of bank drafts were you referring to?

A They were foreign bank drafts and very complicated names.

Q For how much money?

A The total was I think they were in sterling, in

pounds.

Q What was the total in pounds, as best you can recall?

A As best I can recall, there were three: 20,000, 10,000 and 10,000. Total of 40,000.

Q Is that the rough equivalent at that time of a hundred thousand dollars?

A That was the rough equivalent of a hundred thousand dollars.

Q I show you what has been marked 34A, and ask you if you can identify it (handing)?

Can you identify that?

A Yes.

Q What is this?

A That is the letter that I dictated to Mr. Deutsch's secretary, which was hand-delivered by her with the three notes referred to therein.

MR. FEFFER: Your Honor, the government offers 34A.

THE COURT: Show it to counsel.

(Pause.)

MR. SEGAL: Your Honor, may I have a brief voir dire examination?

THE COURT: Yes. Why don't you show it to

counsel while you are back there, and then you can have a brief voir dire.

** VOIR DIRE EXAMINATION

BY MR. SEGAL:

Q Mr. Leff, there is some handwriting on this Exhibit 34A for identification. Which of that handwriting is yours?

A The signature, Perry Leff, and president of Dimension Five, LTD.

Q The handwriting to the left of that is not in your hand?

A It is not.

Q Do you know when that was placed on there?

A It says 6 --

Q Do you know when it was placed on there?

A No.

Q There is also some writing in the upper right-hand corner under the identification of the exhibit. Is that your handwriting?

A That is not.

MR. SEGAL: I would ask whether the government intends to offer all of this material without the two pieces of handwriting which I have designated.

MR. FEFFER: No, we will offer it without those

two handwritings.

MR. SEGAL: I have a continuing objection to this whole line, your Honor.

THE COURT: Do you object specifically, though, to this exhibit?

MR. SEGAL: Yes, your Honor.

THE COURT: All right. Let me have the exhibit.

MR.BLOCK: Our position has been stated at the side bar repeatedly, your Honor, as to the basis of our objection.

(Pause.)

THE COURT: Overruled. It will be admitted exclusive of the handwriting.

MR. BLOCK: Is that subject to connection, your Honor?

THE COURT: Yes, it is admitted subject to connection insofar as it relates to certainly the defendants Cohe and Duboff. There was some connection, I think you said there was dictated to Mr. Deutsch's secretary in his presence?

THE WITNESS: Yes, your Honor.

THE COURT: All right. It will be subject to connection as it relates to Mr. Cohen and Mr. Duboff.

(Government's Exhibit 34A received in evidence.)

two handwritings.

MR. SEGAL: I have a continuing objection to this whole line, your Honor.

THE COURT: Do you object specifically, though, to this exhibit?

MR. SEGAL: Yes, your Honor.

THE COURT: All right. Let me have the exhibit.

MR.BLOCK: Our position has been stated at the side bar repeatedly, your Honor, as to the basis of our objection.

(Pause.)

THE COURT: Overruled. It will be admitted exclusive of the handwriting.

MR. BLOCK: Is that subject to connection, your Honor?

THE COURT: Yes, it is admitted subject to connection insofar as it relates to certainly the defendants Cohen and Duboff. There was some connection, I think you said there was dictated to Mr. Deutsch's secretary in his presence?

THE WITNESS: Yes, your Honor.

THE COURT: All right. It will be subject to connection as it relates to Mr. Cohen and Mr. Duboff.

(Government's Exhibit 34A received in evidence.)

MR. FEFFER: May I read this, your Honor?

THE COURT: You may.

(Mr. Feffer read to the jury from Government's Exhibit 34A in evidence.)

BY MR. FEFFER:

Q What was the next thing that happened with respect to the bank drafts?

A One of the drafts for 2,000 --

MR. SEGAL: Your Honor, can we have a date as to when?

THE COURT: Yes.

THE WITNESS: I'm sorry, sir?

THE COURT: Did something happen to one of the drafts?

THE WITNESS: Yes, your Honor.

THE COURT: When?

THE WITNESS: Between June 29 when they were hand-delivered to the Chase Manhattan Bank, and between August of '70, when they were -- and between sometime in August when I received a substitute draft for one which had not cleared, in the amount of 10,000 pounds.

Q You indicated that you received a substitute draft, is that correct?

A Yes.

Q Whom did you receive this from?

A I received it from Mr. Deutsch.

Q I show you 34B for identification and ask you to look at it and identify it, if you can.

A It is the substitute draft that I am referring to.

Q And there is a second part ot 34B. Can you identify that?

A It was -- it is a form that was signed on -- a form of the City National Bank signed by my own secretary, who hand-delivered it to the bank for deposit.

MR. FEFFER: Your Honor, the government offers 34B.

THE COURT: Show it to counsel.

(Pause.)

THE WITNESS: Your Honor, may I say something?

THE COURT: No.

(Pause.)

MR. BLOCK: If your Honor please, I have the same objection as to Mr. Cohen, the one that had been previously urged.

THE COURT: Very well.

MR. SEGAL: Your Honor, can we come to the side bar?

THE COURT: Yes.

(At the side bar.)

MR. SEGAL: Your Honor, there appears to be no foundation at all for this check. I think what is as important is the fact that we are now into August 20. Also the other document -- I am not sure whether these documents relate one to the other or not.

But the underlying document certainly indicates something different from what the government is trying to gain out of this particular transaction. We have an individual here who I don't know --

MR. FEFFER: The secretary.

THE COURT: He testified to that.

MR. SEGAL: This is his secretary?

THE COURT: Yes. You can ask that. That was my understanding. Who apparently picked up the check, and this is in the form of a receipt. It says at the top collection receipt.

MR. SEGAL: Your Honor, we have no indication here of how it was actually received, through whose instructions or by whom, and who gave any kind of indication that this thing was even around, more than it is even related to this case.

Certainly the date of the check itself, and the

government by putting in this kind of a document which takes place in August, which is subsequent to the time of the conspiracy in this case in order to prove, or not even really prove, but infer something which is a part of the case that is supposed to have happened in March of 1969 -- or '68, is I think compounding what the particular problem was that we have all addressed ourselves to at great length.

I think it is not probitive of anything, there is no proper foundation that has been laid here and at this point the government is reaching for something. That is just not germaine.

MR. ROBSON: I am just trying to figure out whose check this is. If it is an american check it seems to me the check of whoever signed it, of whoever has the account at Reiss & Company.

THE COURT: My suggestion is the check is drawn on the Reiss Bank, that it is to the order of Mr. Leff in the amount of $25,000, and appears to be signed, looks like Joseph Glasser, to me. That is what I see here so far.

MR. ROBSON: Which means that this is not a Reiss Bank check but it is a check of Joseph Glasser personally.

MR. SEGAL: Drawn on the Reiss Bank.

MR. FEFFER: He was a director of the bank.

MR. ROBSON: Is there any testimony that he was a director? Do you want to get up and testify to that?

MR. SEGAL: Your Honor, that is the problem here. That is exactly the problem that we have got. We don't have any time as to this and yet the government is getting an inference because he happens to be Glasser.

The government has stated, in developing your reason as to admissibility here, that the government is attempting to infer that this may be proceeds of funds Mr. Deutsch received as a result of the transmittals that were made to the Reiss Bank by Shwidock.

This does not even prove it, it doesn't even come close. If the government is proposing that this is what is going to prove that this is Deutsch's money, the government's own exhibit indicates that it is somebody else's money.

MR. FEFFER: That's not the point.

MR. SEGAL: Now what we have here is to say it is our money because we have the man whose check it is, and that's not in the record, your Honor. This kind of torturing is precisely what we had in mind when we mad our arguments before, because we were aware of the fact that there is no check from Mr. Deutsch.

When the government represents to you that they have a check from the Reiss Bank they, in that statement to you, are saying to you, and I believe that the Court understood that they have a check from the Reiss Bank which they contend is Mr. Deutsch's.

MR. FEFFER: I said they had a check from the Reiss Bank which is signed by Mr. Glasser, and I made it very clear that I tied this whole thing to Mr. Glasser.

MR. ROBSON: This is a check on the Reiss Bank, which is a different thing, especially in this context.

MR. FEFFER: The point is, your Honor, that we are using this to show a relationship between Mr. Deutsch and the Reiss Bank. They want to argue that it shows a relationship between Mr. Glasser and has no connection with the Reiss Bank, they can argue that. That is an interpretation which they can argue.

MR. ORENSTEIN: Your Honor, it is not a question of --

MR. ROBSON: In other words, now if I have given the court reporter's payment of a check in New Jersey for payment of the transcript fee, you would use that to establish that the reporters have a relationship with the bank in New Jersey, is that right?

MR. ORENSTEIN: There is no indication whether it's a cashier's check or a bank draft. That's germane to the instrument itself.

MR. SEGAL: We don't want error in this case and respectfully we urge the Court that this proof is possible error. I think error as to us. I think clearly as to the possibility, your Honor himself was afraid of with regard to Mr. Cohen.

THE COURT: I was prepared if the check was admitted, to give obviously the most specific and strong limiting instructions relative to Mr. Cohen and Mr. Duboff.

MR. ORENSTEIN: Your Honor, I suggest that no amount of limiting instructions would suffice in that case.

MR. SEGAL: I just wonder whether or not there shouldn't even be instruction as to Mr. Deutsch and I would urge the Court to give it. There is nothing in this check

that the government should be allowed to argue from.

MR. ROBSON: I don't think it should be admitted.

THE COURT: Let's look at our record for a moment. There is a prior telephone conversation that is in the record between Hurley and Mr. Deutsch in which in essence Hurley says, "Dimension 5 needs money" and Deutsch said "I'll get the money." Drafts arrive. One of them doesn't clear --

MR. ROBSON: Deutsch says "I have arranged a loan for you." This witness testified to that.

MR. SEGAL: All the testimony indicates that Mr. Deutsch is obtaining money for this loan just as he did for Richard Packing.

MR. FEFFER: That's correct.

MR. ROBSON: From Joseph Glasser. Who is Joseph Glasser?

MR. SEGAL: But the government is not asking for that. The government is saying that this lends the basis for an inference or a conclusion that actually these were Mr. Deutsch's funds. That is just not so.

THE COURT: Of course also for what it's worth, we don't have the original.

MR. FEFFER: The original is with the Bank

Reiss, your Honor.

THE COURT: This is a copy. The Bank Reiss is not an adverse party. You might say, well the original check is in another jurisdiction and not subject to subpoena. I recognize that. But at this point we don't have that, we don't have Mr. Glasser, we have Mr. Leff.

MR. SEGAL: We don't have the other side of the check either, your Honor.

THE COURT: I'm not that concerned about this because we do know or we can find from this witness that he endorsed the original of this check or draft, I would think, and that it was paid through the bank to which he sent, the Century National Bank. That in and of itself would not necessarily deter me in this respect.

MR. ROBSON: What does this prove, except that in August of 1970 Mr. Deutsch made and arranged a loan from a man named Joseph Glasser?

MR. FEFFER: Down on Reiss Bank.

THE COURT: They said that already. That is as if you wnet to your bank and made out a personal check, it would say drawn on the First National City Bank of New York. This is the drawee bank. It does not indicate to me on its face, and I'm not that familiar with Swiss banks and banking practices, that this is a bank check or a

cashier's check.

MR. FEFFER: That's correct, your Honor.

THE COURT: There is also no indication directly on the check that the account on which it was drawn is Mr. Deutsch's account. You'd have to infer, obviously, from this that it was.

I am troubled more as it relates to Mr. Cohen and Mr. Duboff. I can see in a trial against Mr. Deutsch alone to let this go in over Mr. Segals' strenuous objection.

MR. FEFFER: First of all I'm certainly not worried about it with respect to Mr. DEutsch. With respect to Mr. Cohen there may be an arguable point that anything relating to the Reiss Bank can be prejudicial to Mr. Cohen.

I repeat, arguable. That is an argument that has been made repeatedly. With all due respect, your Honor, I don't think one can be made very well with repsect to Mr. Duboff.

THE COURT: If they are going to object to what has been presented here as a copy of the check and not a complete document because the reverse side is not in, I will hear them on that.

MR. SEGAL: Your Honor, I would urge that as an additional ground. My background, and not that it is

unimportant, it additionally, but background is that this check is not probative and does not lend to the inferences the government is after. And for that reason it should be excluded.

All it does is submit prejudicial ma erial which both is not probative and then may be highly dispositive of Mr. Cohen's fortune in this case. I'm not arguing for that. I am arguing for m yself. I am saying that the government can't and should not be permitted to argue, even if this goes in and therefore it shouldn't go in becuase the very purpose for which they are offering it does not lend itself to a legitimate argument that this check is from funds that Mr. Deutsch has and therefore shows that Mr. Deutsch had the account.

MR. ROBSON: There isn't any relationship between the Swiss bank --

THE COURT: Let me put it this way:

Would you gentlemen object to further inquiry of this witness as to whether there was some sort of debtor-creditor relationship that was established between this witness and Mr. Deutsch as a result of anything occurring at this time? If not, if there was no debtor-creditor relationship established between this witness and Mr. Deutsch, as a result of what I have in front of me

here, I would have no question about keeping the check out.

MR. ROBSON: Let's assume the best from that. Let's assume that this witness could prove irrefutably that Joseph Glasser, whoever he is, advanced money to Mr. Deutsch, I don't think the inference would arise to that, but I don't think that is the best that could be possibly established, in what wasy is that any connection? Who is Joseph Glasser? He is an account at the Reiss Bank, at least insofar as this record is concerned.

THE COURT: He could in theory at least at this point, and I recognize you could argue it both ways, at least in theory he could have arranged for a loan to Mr. Deutsch.He could have arranged for a loan to Mr. Leff. On the present state of the record, I don't know.

MR. FEFFER: I will ask more questions, your Honor.

MR. SEGAL: The government already indicated that the ultimate obligation which arose as a result of this money going to Dimension 5 was as between Glasser and Leff. The government has stated that.

If that is correct, then it answers your Honor's question without any further inquiry in that regard. The obligation, the debtor-creditor obligation ran from this man to Glasser, and that's it.

MR. FEFFER: He will testify that Mr. Deutsch told him on many, many occasions that Mr. Deutsch was an guarantor to Mr. Glasser on this loan.

THE COURT: I don't know that that advances it all that far.

MR. FEFFER: If I can establish independently that Mr. Glasser was a director of the Reiss Bank, would that satisfy your Honor's objections?

MR. SEGAL: What does that do? We are not trying Mr. Glasser.

THE COURT: Can you establish that Mr. Glasser was acting for and on behalf of Mr. Deutsch?

MR. FEFFER: I can't establish whose account this is, your Honor. But if I can establish that Joseph Glasser was at this time a director of the Bank Reiss, that would certainly be very, very persuasive, in arguing where this money came from.

MR. SEGAL: I don't understand how that can be persuasive.

THE COURT: I made up my mind.

At the moment I am sustaining the objection.

MR. FEFFER: Your Honor, this puts the government in a real bind because I had assumed that with your Honor's ruling, these were going to go in.

THE COURT: I haven't seen the draft, though.

MR. FEFFER: All counsel coud have seen the draft --

THE COURT: The government may be in a bind; they are going to stay in that bind.

Objection sustained.

(End of side bar conference.)

(In open court.)

BY MR. FEFFER:

Q Mr. Leff, do you know a Joseph Glasser?

A I know the name.

Q Who is Mr. Glasser and how did you learn of his name?

MR. SEGAL: I object to this, your Honor.

THE COURT: Overruled. The exhibit was gone into and I want to know a little bit more about the individual myself.

A Joseph Glasser was the --

MR. ROBSON: Your Honor, may I first ascertain that since we understand the nature of the problem whether the witness is going to be testifying on the basis of his own knowledge. He said, "I know the name," and now the question is "Where did you meet him and who is he?"

A I saw his name. He signed --

MR. SEGAL: Objection, your Honor.

THE COURT: Let me start with just one question of the witness:

Did you ever meet a gentleman by the name of Joseph Glasser?

THE WITNESS: I did not, your Honor.

Q How do you know the name Joseph Glasser?

A His name appeared --

Q When did you first hear the name?

A Mr. Deutsch told me that the money would be--

MR. SEGAL: Objection.

THE COURT: Yes, yes.

MR. SEGAL: I ask that be stricken.

Q Are you referring to the money--

MR. SEGAL: Objection.

THE COURT: You may step to the side bar.

Ladies and gentlemen, we have a problem here which is taking a little more time and consideration and I would suggest if you just be patient, and I think it is a little early for the recess, unless you want to have your recess now, and go to 4:30. Would you prefer that? It is rather early.

(At the side bar.)

MR. FEFFER: At the very least, since we have the exhibit in with respect to the English pounds, I would like to have Mr. Glasser identified, that Mr. Deutsch told him that the money was arranged for by Mr. Glasser -- I'm talking about the English pounds as well as the check. Your Honor gave me the right to find some way in the future to connect Mr. Glasser and I have to establish who he is, as Mr. Deutsch told him.

I will make the effort to establish that Mr. Glasser was a director of the Swiss bank. I want this man to relate that the $100,000, and nothing more, was to come from Mr. Glasser, and that is the end of my direct examination, not in connection with the Swiss bank check.

MR. ORENSTEIN: Your Honor, I would like you to direct this witness to answer the questions and not volunteer the information, which he has a penchant for.

THE COURT: I noted that, and I will.

The government, by virtue of my ruling, indicates they want to ask one more question to explain the exhibit they have in evidence. I am inclined to let them do that. They will not mention, they will not advert to the Reiss Bank.

MR. FEFFER: That's correct.

MR. ROBSON: The government is requesting a new modification of the subject to connection rule, that is, not taking it subject to connection, but subject to connection we are going to try to establish in the future.

THE COURT: I think you have misstated that. I will permit this very brief inquiry. We do have an exhibit which is in evidence and I will permit brief inquiry on that but there will be no mention of the Reiss Bank.

MR. FEFFER: If you let me lead, your Honor, I can avoid that.

THE COURT: I will let you lead on that.

MR. ORENSTEIN: Will you direct the witness, your Honor?

THE COURT: I will listen very carefully.

(In open court.)

THE COURT: Mr. Witness, you are going to be asked a few more questions by Mr. Feffer. Listen to each question very carefully and answer specifically to the question as asked. Do you understand that?

THE WITNESS: Yes, your Honor.

BY MR. FEFFER:

Q Mr. Leff, I believe you testified to a meeting that took place on June 29th with Mr. Deutsch at Jaffe & Company, is that correct?

A Yes, sir.

Q What did Mr. Deutsch tell you at that time, if anything, with respect to this individual by the name of Joseph Glasser?

MR. SEGAL: Objection, your Honor. If there was a discussion at that time about him and then what was said.

THE COURT: Yes.

Q All right.

A Mr. Joseph Glasser was a gentleman who was lending Dimension 5 $100,000.

MR. FEFFER: No further questions.

MR. BLOCK: We have no cross, your Honor.

MR. FEFFER: Your Honor, may I ask one additional question?

THE COURT: You may.

BY MR. FEFFER:

Q Do you know Bernard Shwidock?

A Pardon me?

Q Do you know a man by the name of Bernard Shwidock?

A I don't.

MR. FEFFER: No further questions.

MR. BLOCK: No cross.

THE COURT: Mr. Segal.

MR. SEGAL: Your Honor, I have no cross.

THE COURT: Mr. Robson?

MR. ROBSON: No cross.

THE COURT: Very well. The witness is excused.

(Witness excused.)

THE COURT: Do you have your next witness ready?

A Yes.

Q When was that?

A In January of 1968.

Q What, if anything, did you do at that time?

A I was called on active duty with the Colorado Air National Guard.

Q How long did you remain on active duty?

A From January of 1968 until May 1, 1969.

Q What did you do thereafter?

A I came back to Financial Programs.

Q I have asked you to identify a number of names previously. Would you tell the Court and jury who, if any, of these people were back at Financial Programs on May 1, 1969?

A None of them were there at that time. There was a great turnover of personnel during the time that I was gone.

Q What was your position when you returned to Financial Programs in May of 1969?

A I was assigned to the investment research division of Financial Programs.

Q Prior to May of 1969, Mr. Giasafakis, what jobs or experience did you have in analyzing stock or investing in stocks?

COHEN
5/10
T4Apm

Q When and where did you meet with Mr. Cohen?

A I met him in a hotel for breakfast, the next morning when I arrived in Minneapolis.

Q Who else if anyone was present?

A It was myself, Mr. Cohen and Mr. Deutsch.

Q Would you tell the Court and jury what was said by yourself and what was said by Mr. Cohen and what was said by Mr. Deutsch at this breakfast meeting?

THE COURT: This conversation is received subject to connection as to Mr. Duboff.

Go ahead, sir.

A I was asked my duties by Mr. Cohen in regards to my duties at Financial Programs, and I indicated that I had just returned from active duty service for a 15-month tour and I was assigned to handle the real estate, land development, hotels and motels, real estate investment trust and mortgage investment trust.

I in turn asked him about his company, Richard Packing, and he indicated to me that it was a family-owned company started by his father and it was run at the present time by himself and his brother, and they were primarily in the specialty meat line, but were also branching out into the Circus Wagon Restaurant operation and also were to begin production of dune buggies.

Q How long did your meeting with Mr. Cohen and Mr. Deutsch last?

A Not more than 20 minutes.

Q Did you have another occasion when you were in Minneapolis to speak with Mr. Deutsch on the subject of Richard Packing?

A Yes. Mr. Deutsch and myself visited another company and on the return we did have conversation in regard to Richard Packing?

THE COURT: When was this?

THE WITNESS: Late in the day when we were returning from this other company that we visited.

Q Would you tell the Court and jury, Mr. Giasafakis, what you said to Mr. Deutsch and what he said to you on the subject of Richard Packing?

MR. BLOCK: This is subject to connection, of course?

THE COURT: Yes. Mr. Cohen was not there, was he?

THE WITNESS: He was not there.

THE COURT: And Mr. Duboff was not there?

THE WINTESS: He was not there.

THE COURT: It is offered subject to connection as to Mr. Cohen and Mr. Duboff.

MR. SEGAL: May we find out who else was there?

THE COURT: You say it was late in the day in July of 1969 when you were in Minneapolis?

THE WITNESS: Yes.

THE COURT: The question has been asked by counsel, you were there, Mr. Deutsch was there; who else was there?

THE WITNESS: When we visited the company there were several other people there. The conversation was between myself and Mr. Deutsch.

THE COURT: Very well. Now tell us what was said.

THE WINTESS: I asked him about Richard Packing was going into, because I knew very little about the company and he indicated to me that they were selling franchises, and over 200 franchises had been sold and they were about ready to open their first Circus Wagon franchise in Anaheim, California, which is right across from the entrance to Disneyland. He also indicated to me that the dune buggy operation was about to begin in California.

Q Did you have another occasion that day to meet with Mr. Milton Cohen?

A Yes, I did.

Q When and where was that?

****

elk5 Giasafakis - direct

A No, I didn't.

Q Did you ever write a report on the subject of Richard Packing?

A No, I didn't.

Q Did you have occasion to confer with anyone at Financial Programs with respect to Richard Packing?

A Yes, I did.

Q Who was that?

A With Mr. Hurley.

Q When was that?

A This was the day that I returned from Minneapolis.

Q Would you tell the Court and jury what was said by yourself and what was said by Mr. Hurley during this conversation?

MR. SEGAL: Objection.

MR. BLOCK: Objection.

THE COURT: Overruled except that this conversation which would have occurred in July of 1969 is offered subject to connection as to all three of the defendants here on trial. You may proceed and tell us what you said to Mr. Hurley and what he said to you insofar as it related to your visit to Minneapolis and to Richard Packing.

A His specific concern was what I --

MR. SEGAL: Objection, your Honor.

THE COURT: Not what his concern was. Try to use the words that he used or the substance of the words.

A He asked me what I thought of Milt Cohen.

Q What did you say to Mr. Hurley?

A I told him that I felt he was a very good leader of his company and that he was very cordial and very honest with me.

Q Did you ever visit the Richard Packing plants?

A No.

Q Do you know whether anyone at Financial Programs or anyone at the funds ever visited Richard Packing's plant?

MR. SEGAL: Objection.

THE COURT: If he knows, yes or no.

A No.

THE COURT: No, you don't know, or no one did?

THE WITNESS: No, I know that no one visited it.

Q Do you know Winifred Finch?

A Yes, I do.

Q Who is Mrs. Winifred Finch?

A It was Miss Winifred Finch at the time. She was a securities analyst at Financial Programs.

files with respect to each of these companies?

MR. SEGAL: If he knows, your Honor.

THE COURT: Yes, indeed.

THE WITNESS: Pardon?

THE COURT: What information, types of sort of information would appear in these files?

THE WITNESS: They would have annual reports, quarterly reports, and any other significant data pertaining to these companies.

MR. SEGAL: Objection, your Honor, to the word significant.

THE COURT: Yes, I will strike the words "and any other significant data."

It doesn't have any real meaning at this point. I think we have an answer. If you want to pursue the matter, you may, Mr. Schatten.

Q Do you know what information the funds had in the Richard Packing file?

A Yes.

Q What information was that?

A There was an offering circular and there was also press releases.

Q Did you ever see an annual report with respect to Richard Packing Company?

A No, I did not.

Q Except for the financial statements that were set forth in the offering circular, did you ever see any financial statements with respect to Richard Packing?

A No, I did not.

Q Did you ever see any quarterly reports with respect to Richard Packing?

MR. SEGAL: Objection, your Honor, unless it can be shown that this man had some obligation to see any of that.

THE COURT: Did you have occasion to look through the Richard Packing Company file during the period of your employment at Financial Programs?

THE WITNESS: Your Honor, I had occasion the day before I left for Minneapolis, to go through the file.

THE COURT: And up to that point?

THE WITNESS: None.

p.m. elv 1 Ginsafakis-direct

THE COURT: Did you look at it after that?

THE WITNESS: After that --

THE COURT: That would have been after July of '69.

THE WITNESS: Anything that was significant on the Financial Venture Fund, that this stock was in the portfolio, the circulars came around our desk. We wouldn't have to go to the file. It would come around.

MR. SEGAL: Your Honor, I would ask that this last statement, about annual reports and the rest, be stricken, or at least confined to, did he ever see them as of the time he looked in that file prior to the first trip.

THE COURT: What we'll do is this:

You went to Minneapolis in July of 1969, as I recall.

THE WITNESS: Yes, I did.

THE COURT: Prior to going you said you looked into the Richard Packing file?

THE WITNESS: Yes.

THE COURT: Were there any annual reports in the file?

THE WITNESS: There was an offering circular and a few press releases, and only that.

THE COURT: Later on you say that you didn't go to the file, but all pertinent material regarding investments which were held by Financial Venture Fund were circulated, is that correct?

THE WITNESS: Yes.

THE COURT: Up through July, 1970, did you see any annual, semi-annual, or quarterly reports relating to the company?

THE WITNESS: To Richard Packing?

THE COURT: Yes, sir.

THE WITNESS: No, I did not.

Q Mr. Giasafakis, I show you what has been marked as Government's Exhibit 31A in evidence, Government's Exhibit 31B in evidence, 31C in evidence, 31D in evidence, 31E in evidence and 31G in evidence and I ask you to look through these documents and would you tell the Court and jury after reading through them which of these documents, if any, you have previously seen?

MR. BLOCK: I object to that, your Honor. It's completely repetitious. They are already in evidence.

THE COURT: I think your objection was that they are already in evidence?

MR. BLOCK: What difference does it make?

MR. SCHATTEN: May I respond, your Honor?

THE COURT: I will let you ask the question.

MR. SCHATTEN: Thank you, your Honor.

THE COURT: I recognize what counsel says. Obviously he is quite correct, but I will letyou inquire.

Q Can you tell us which if any of those documents you saw during the time that you were at Financial Programs?

A I saw C, D, E and G.

Q Do you know when for the first time you saw Government's Exhibit 31C in evidence?

A It would have been in July of 1969.

Q Where would you have seen it?

A This would have been coming across my desk.

Q At Financial Programs?

A At Financial Programs.

Q Do you know when for the first time you saw Government's Exhibit 31D in evidence?

A This would have been in August of 1969.

Q Where did you see that?

A Again, coming across my desk.

Q When for the first time did you see Government's Exhibit 31E in evidence?

A This would have been in October of 1969.

Q Where would that have been?

A Coming across my desk.

Q When for the first time did you see Government's Exhibit 31G in evidence?

A This would have been in April of 1970.

Q Where would that have been?

A Coming across my desk.

Q Did you read those documents when they came across your desk?

A Yes, I did.

Q These documents which came across your desk, were they distributed to other people at Financial Programs?

A Basically the portfolio managers if they held the stock.

Q With respect to the Richard Packing documents would they have gone to Mr. Hurley?

A Yes.

Q Would they have gone to Mr. Anton?

A Yes.

Q Would they have gone to Mr. Frankenthaler?

A Yes.

Q How did the funds get their information with respect to Richard Packing?

MR. SEGAL: Your Honor, has this witness been qualified to answer that?

THE COURT: If he knows.

Q If you know.

A Through the telephone conversations from Mr. Deutsch and/or --

MR. SEGAL: Your Honor, I am going to object to this unless this witness can state how he knows how the funds get their information.

THE COURT: He's told us certain things relative to having seen an offering circular and press releases.

Did you get additional information regarding the funds --

MR. SCHATTEN: Regarding Richard Packing, your Honor.

THE COURT: I'm sorry. Regarding Richard Packing?

THE WITNESS: Yes, from Mr. Hurley.

THE COURT: You got your information from Mr. Hurley?

THE WITNESS: Yes.

Q Do you know where Mr. Hurley got his information?

MR. SEGAL: Objection.

THE COURT: Sustained.

Q Do you know how often Mr. Hurley would confer

on cross examination.

MR. SCHATTEN: May I ask the question Mr. Robson was about to?

THE COURT: Yes.

Q Could you explain what you were going to explain?

MR. SEGAL: Objection, your Honor.

THE COURT: If there is no objection --

MR. SEGAL: There is an objection.

MR. SCHATTEN: Withdraw Mr. Robson's question.

THE COURT: All right, gentlemen.

MR. ROBSON: If Mr. Schatten wants me to ask a proper question, I will be glad to.

THE COURT: But you say Mr. Hurley spoke with Mr. Deutsch on various matters approximately four or five times a day?

THE WITNESS: Yes.

Q Were you present at conversations between Mr. Hurley and other people at Financial Programs when the subject of Richard Packing came up?

A Yes.

Q Who would Mr. Hurley speak with about Richard Packing?

A Mr. Anton, who was portfolio manager of

Financial Dynamics, and Mr. Frankenthaler, who was portfolio manager of Financial Industrial Fund.

Q How often would Mr. Hurley speak with Mr. Anton and Mr. Frankenthaler on the subject of Richard Packing?

MR. BLOCK: If he knows. Was he there every minute of every hour of every day? This gets to be a little ridiculous.

THE COURT: Let's find out how many times of the day or week you were personally aware of Mr. Hurley speaking with those gentlemen on the subject of Richard Packing Company.

THE WITNESS: At least once a week.

Q What would be the substance of these conversations?

MR. BLOCK: Objection. It's already testified to.

MR. SCHATTEN: I don't believe he has.

THE COURT: Were you present when Mr. Hurley talked to these people?

THE WITNESS: Yes.

Q Would you tell the Court and jury what Mr. Hurley said in these conversations and only what Mr. Hurley said?

MR. ROBSON: I object on the ground it is

hearsay, number one.

Number two, I don't think it is proper to ask the witness of the substance of fifty telephone conversations --

THE COURT: No, this is apparently weekly conversation.

MR. ROBSON: Which means over the course of a year or two, there is fifty conversations. How do you ask the witness the substance of fifty conversations?

THE COURT: Fair comment. The objection is sustained to the form of the question.

Q Would you tell the Court and jury what Mr. Hurley said in these conversations?

MR. ROBSON: Which conversaions?

MR. SEGAL: Same objection.

THE COURT: Let's go back.

You have indicated that Mr. Hurley spoke approximately once a week with Mr. Anton and Mr. Frankenthaler on the subject of Richard Packing?

THE WITNESS: Yes.

THE COURT: You came there in May 1, 1969?

THE WITNESS: Right.

THE COURT: Did you attend these meetings where the discussion took place that you have just indicated took

place?

THE WITNESS: Yes. They were informal meetings.

THE COURT: And you were present?

THE WITNESS: Yes.

THE COURT: Let's take the first one. Go from there. Go ahead, counsel.

Q Would you tell the court and jury what was said by Mr. Hurley?

A He would say that --

MR. ROBSON: If your Honor please, we are talking about the first conversation. I think the witness is now talking about some general conversations.

THE COURT: Let me ask the witness one question:

Are you telling us that they met every week for a period of time, but all the conversations were always the same?

THE WITNESS: No.

THE COURT: Then start at the beginning and take us through the conversations, indicating when, who was present, and what was said.

THE WITNESS: Well, we would meet informally --

Q Go ahead, Mr. Giasafakis.

A We would meet informally after work every night and myself, Mr. Hurley, Mr. Anton, Mr. Frankenthaler were known to stay after 4:30 and it would be like a bull session and Mr. Hurley would receive a phone call from Mr. Deutsch and Mr. Hurley would tell us what was said in regard to the happenings of Richard Packing, and they were different every time.

MR. SEGAL: Your Honor, it wasn't responsive to the question. If we are getting background, all right. But I don't know what this was in response to.

THE COURT: He had testified, if you recall, that there were weekly discussions among Mr. Hurley, Mr. Anton, and Mr. Frankenthaler on the subject of Richard Packing Company. He's indicated apparently a little more just now. Let's have the government proceed in a proper fashion, please.

Is there anything else you wish to add?

MR. SCHATTEN: No, your Honor.

THE COURT: Very well. You have completed the direct examination.

Mr. Block, you may inquire.

MR. BLOCK: Thank you. Would you give me a moment?

THE COURT: Indeed.

Q Does that lead you to change your answer, that the only thing that ever came across your desk or was known to you at the fund were the press releases and offering circular? You did see that?

A I did see those, yes.

Q So you were in error in what you said before?

A No, I wasn't.

Q You are not in error?

A Right.

Q I see. When did you leave the fund?

A In August of 1970 -- you mean the first time or the second time?

Q The second time.

A August of 1970.

Q I show you Government's Exhibit 13A which is the Richard Packing Company annual report for fiscal year 1969 and ask you if you ever saw that at the fund, Financial Programs?

A No, I never saw that.

Q Never did?

A No.

MR. BLOCK: I have no further questions.

THE COURT: Thank you, Mr. Block.

Mr. Segal?

MR. FEFFER: Conclusion when, your Honor, now ow 1969?

THE COURT: I think that is a fair comment.

Q Is that your present conclusion?

A Yes.

Q Was it your conclusion in 1969?

A No.

Q Was it in 1970?

A Yes.

MR. FEFFER: Could we have a date, your Honor, as to when in 1970?

THE COURT: If you wish to inquire on redirect, unless Mr. Segal wishes to ask the question, but he is not obliged to.

Q You say you were working for Jack Hurley, right?

A I started working with Mr. Hurley in the latter part of August of 1969, in addition to my other duties of following the industry groups for all the other funds.

Q Incidentally, this business about the funds controlling the float, that wasn't just your conclusion in 1970, it was common knowledge in 1970 --

MR. SCHATTEN: I object, your Honor.

THE COURT: Sustained.

MR. SEGAL: Objection to that, your Honor.

MR. FEFFER: Objection to what ?

THE COURT: One counsel.

MR. SCHATTEN: I object, your Honor.

THE COURT: Overruled.

Q Do you have the question? Does this refresh your recollection that you ever said to anybody in the United States Attorney's office that it was common knowledge that the funds were controlling the float?

A Yes.

Q Having refreshed your recollection, could you so state that it was common knowledge?

THE COURT: Sustained.

MR. SCHATTEN: I object.

MR. SEGAL: Is your Honor going to abide by the U.S. Attorney's ruling?

THE COURT: I think you better, too.

MR. SEGAL: I have no further questions.

THE COURT: Thank you, Mr. Segal.

Mr. Robson.

CROSS EXAMINATION

BY MR. ROBSON:

Q Mr. Giasafakis, when you went through that file in July 1969 you saw an offering circular, right?

A Yes.

Q Do you happen to recall what the float was or publicly held shares were of Richard Packing when you looked at that offering circular in July 1969?

A I am sure I figured it out at that time.

Q Was it about 100,000, as you recall it now?

A Probably.

Q You don't remember that?

A No. I did not go through an analysis of Richard Packing. I read that offering circular on the way up to Minneapolis, because I was a substitute for Mr. Hurley. I recognized names, so I could be conversant with the people I was to meet, and I read what the company actually did, and that was basically it, but I don't remember numbers. I was not sent to do an analysis.

Q You do remember that you were told 200 franchises, not 100?

A Yes.

Q That sticks in your mind?

A Yes.

Q You never will forget that?

A No.

Q To your dying day, you will remember that?

MR. SCHATTEN: I object, your Honor.

THE COURT: Sustained.

Q Did you at the time that you were going through these daily conversations during which Richard Packing came up many times know what the float was, during '69 and '70?

A Yes.

Q On a daily basis you knew what the float was then, didn't you?

A Yes.

Q You also knew what each fund was buying and what each fund held at any particular time of any stock, is that not true?

A Yes. That was public knowledge within the research division and we saw that daily with the sheets that were passed around to us by a clerk.

Q So that you would have known, if the facts that I tell you now are correct, that the float ranged from about 110,000 shares, on the low side, to about 200,000 shares on the high side, and that the funds had from 50 to 60,000 shares and you would have known at all times that it funded most of the float, would you not, at that time?

MR. SCHATTEN: Can we fix a time?

Q No idea whatsoever?

A I knew there was a substantial amount.

Q There were at least weekly conversations between Mr. Anton, Mr. Hurley and you?

A Yes.

Q Did Richard Packing come up frequently during those conversations?

A Yes.

Q Is it your testimony you have no recollection during any of those weekly conversations of any discussion of the float and how much of the float was owned by the funds?

A That's right.

Q No recollection at all?

A No recollection.

Q Don't remember that they ever even mentioned it?

A That's right. That was --

Q You answered the question. You have no recollection. The only thing you do recall specifically is that you saw the offering circular, you remember those press releases, without question, and you remember you were told 200 franchises?

A Right.

Q Everything else you don't remember?

A Right.

Q Isn't it a fact that there was conversation among the various people at Financial Programs, including you and Mr. Hurley and Mr. Anton, Mr. Frankenthaler, Mr. Hirshheimer and another man whose name begins with an H --

THE COURT: Heisderberg.

Q -- about the fact that these funds controlled the floats in many stocks, including Richard Packing? Wasn't that commonly discussed among all these people?

A I was an analyst, not a portfolio manager.

Q I didn't ask you what you were. I asked you a question, wasn't that commonly discussed among the people at the fund?

A Not in my presence, because I was an analyst.

Q Did you not tell the United States Attorney that it was common knowledge?

A Yes.

Q When you said it was common knowledge, did you not mean that you heard people constantly talking about that fact?

A No, because --

Q You say no.

A No.

Q That's okay. What did you base the statement to the United States Attorney that it was common knowledge that the funds controlled these stocks --

A Because we had access to files and any time we could go to a file, pick out an offering circular or annual report, figure out how many shares were outstanding, we can see how much on a daily basis how much the funds own.

Q Is it your testimony here that because you knew that anybody who wanted to find out could find out that, therefore, that was the basis for your statement that it was common knowledge?

A Yes.

Q In other words, you would say it is common knowledge how much money United States Steel earns because I could find out by getting their annual report, is that right?

A Yes.

Q That is what you meant when you told the government was common knowledge, that it was available information, is that right?

A That's right.

Q Will you look at Defendant Duboff's Exhibits

reports for the publications of about thirty-five companies and several industries and also as a similar function, a pattern with that, you analyze companies other than that for recommendation for purchases for the funds.

Q Did you continue doing primarily that same type of work after 1967?

A Yes, but with a greater accent toward investment recommendations rather than writing about that, what was known as special situations. I generally stopped writing about them and started actively looking for them more for the funds at that time.

Q Do you know a Bernard Deutsch?

A Yes.

Q Do you see him in the courtroom?

A Yes.

MR. SEGAL: Conceded, your Honor.

THE COURT: IT is conceded Mr. O'Meara knows Mr. Deutsch.

Q Approximately when did you first meet Mr. Deutsch?

A Well, I can't recall exactly, but the best I can remember is that it was in late 1968.

Q Some time in the fall of 1968?

A Yes, approximately, I think.

Q Do you remember where you first met Mr. Deutsch?

A Well, I don't remember exactly, but I am fairly certain it was in connection with an investment called Combustion Equipment Associates which my firm invested in through him. It was through that investment that I believe I became acquainted with him.

Q Do you have the company Richard Packing Company?

A Yes.

Q Can you tell the Court and jury when and how youfirst heard of that company?

A Well, it was through Mr. Deutsch. We were making that investment in Combustion Equipment and he brought that to my attention.

Q Do you recall when this was, approximately?

A I think late 1968, toward the end of the year.

MR. SEGAL: Your Honor, I just wonder whether this might be an appropriate time for a side bar conference?

THE COURT: Well, we are into Richard Packing Company now. Let's see what the next question is, and if you want one in the next question or two, let me know.

Q Was this a telephone conversation you are

referring to?

A I believe so, yes.

Q What did Mr. Deutsch say to you during the course of this telephone conversation, to the best of your recollection?

THE COURT: This will be received subject to connection insofar as it relates to Mr. Cohen and Mr. Duboff.

A Well, having satisfactorily established a working relationship with Mr. DEutsch, and I representing a mutual fund operator, he then brought Richard Packing to my attention for possible investment by the funds.

Q Did he mention the amount of the investment at that time?

A Not initially, I don't believe. I am almost certain of that, that that came up later.

Q Did he say anything else during this telephone conversation?

A I don't recall, specifically.

Q Did you have occasion to meet with Mr. Deutsch after this telephone conversation in connection with this proposed investment?

A Well, after several calls we agreed to meet the principal of the company, as the investment research

developed.

Q When did this meeting take place?

A I don't recall specifically that either, but I think it was late 1968, December, November.

Q Do you recall where the meeting took place?

A Yes, at Status Marketing, which was a subsidiary -- rather, the marketing company set up by Richard Packing. They had a townhouse in mid-Manhattan at the time.

Q Who was present during that meeting, if you recall?

MR. ROBSON: Your Honor, I would move to strike the testimony about it being an arm of Richard Packing, he believes.

THE COURT: Well, he believes and the jury will disregard what he believes. If it later develops that he knows, fine, but at the moment the jury will disregard that last comment about it being an arm of Richard Packing.

A At that meeting there was Mr. Deutsch, Mr. Cohen, Mr. Ward, of Status Marketing, and myself and I think three or four other investment analysts.

THE COURT: Was Mr.Duboff present at that time?

THE WITNESS: I don't believe so.

THE COURT: Then the conversations which are to be related now will be introduced subject to connection insofar as they may relate to Mr. Duboff, so far as Mr. Duboff is concerned, I should say.

Q Do you see Mr. Cohen in the courtroom?

A Yes.

MR. BLOCK: Conceded.

THE COURT: It is conceded the witness knows Mr. Cohen.

You say you had this meeting and Mr. Cohen and Mr. Deutsch and others were present.

THE WITNESS: Yes.

Q Did you receive at that meeting certain brochures and other items?

A I believe so, yes.

Q I want to show you what has been received in evidence as Government's Exhibit 11A, B and C, and ask you if you can identify these and, if so, when you received them.

A Yes. These are those and I got them at that meeting, I believe.

THE COURT: When did that meeting take place, sir?

THE WITNESS: I think it was late 1968.

Q Mr. O'Meara, do you know how many franchises were sold as of January 1, 1969?

MR. SEGAL: Objection.

THE COURT: Let's find out if the answer is yes or no.

Do you know of your own knowledge? Just answer yes or no.

THE WITNESS: I can't really do that without saying that I'm not sure, but I am fairly certain there was none, but I am not certain of that, but I believe that was the case.

Q That is your best recollection?

A Yes.

MR. ROBSON: I move to strike the testimony, if your Honor please.

MR. FEFFER: Your Honor, I think the witness has said it is his best recollection.

THE COURT: I am going to strike it and tell the jury to disregard it. I will permit you to explore how he might have known. If he was told something by someone, it might be admissible. But in the present state of the record, it is sufficiently vague and I will sustain Mr. Robson's objection and direct the jury to disregard it but permit you to inquire further as to the sources of

his knowledge or information.

Q Did Value Line ultimately agree to make a certain purchase from Richard Packing?

A Yes.

Q How many shares did they agree to purchase?

A 50,000.

Q How much did they pay for them?

A 1.4 million.

Q Were they registered or unregistered shares?

A Unregistered.

Q Do you know approximately when the agreement was reached to make this purchase by Value Line?

A In February, 1969.

Q I want to direct your attention to the period following the Status Marketing meeting that you referred to and mid-February 1969, and I am going to ask you:

Did you have an occasion during that time period to speak with Mr. Deutsch?

A Yes, several times.

Q Approximately how many times?

A I think four or five times.

Q Were they telephone calls or meetings?

A Telephone calls.

Q Are you able to recall the substance of any one particular telephone conversation?

A Oh, no, I don't think so. Not any one.

Q Are you able to recall in substance what you and Mr. Deutsch talked about in those four or five telephone calls?

A Yes. In general, the --

MR. SEGAL: Objection, your Honor.

THE COURT: Yes.

Q Can you tell the Court and jury as best as you can recollect what Mr. Deutsch said during the course of those four or five telephone calls?

A Yes.

Q That took place between the Status Marketing meeting in lage 1968 and the mid-February point in 1969?

MR. SEGAL: Your Honor, may we have some location of the time of these calls?

THE COURT: Yes.

Taking the calls in order and giving us the substance, could you tell us when, or approximately when, this series of calls began and how frequent the calls were, how many calls there were and when that particular sequence of calls ended, and then you can tell us the substance of what was said during those calls? This would

have been, as I understand it, in early 1969.

THE WITNESS: You want to know when the calls were made?

THE COURT: You may not know the exact date, but did you have one, two, four, five, ten calls with Mr. Deutsch over the period of a few weeks or months --

THE WITNESS:I think four or five calls over a month or two period.

Q Approximately how long after the Status Marketing meeting did the first telephone call with Mr. Deutsch take place?

A Only a matter of days.

Q And the last one in the series took place approximately when?

A Probably early February.

Q Can you tell the Court and jury what Mr. Deutsch said in substance during the course of these four or five calls?

A Yes. He mentioned the units the company was selling, the fact of Jaffee & Company's participating so strongly with the investment and the details of the investment itself, how many shares they wanted sold, and the price, and so forth. It was the financial aspects of the company, the possibility of acquisition in the future;

in general how the concept was working out.

Q As a result of these conversations, did you prepare a report?

A Yes.

Q I want to show you what is marked as Government's Exhibit 2 for identification (handing).

A Yes.

MR. FEFFER: Your Honor, the Government offers 2 at this time.

THE COURT: Show it to counsel.

MR. BLOCK: What is the date of that?

MR. FEFFER: February 5th, I believe, 1969.

(Pause.)

MR. BLOCK: No objection, your Honor, on the part of defendant Cohen.

MR. SEGAL: I have no objection, your Honor, but I wonder whether we might come to the bench?

THE COURT: Yes.

Let's hear from Mr. Robson first.

MR. ROBSON: I have no objection to the document per se, but I do object to this whole line of questioning as irrelevant and I would [illegible] bar.

THE COURT: Step up, gentlemen.

(At the side bar.)

MR. FEFFER: Ladies and gentlemen, counsel for the defendants and the Government have agreed that an agreement was entered into between Value Line and Richard Packing Company with respect to the sale of the 50,000 shares of unregistered stock at $28 per share, or $1.4 million, and I believe the date of the agreement is --

MR. BLOCK: May 8, 1969.

THE COURT: Very well, the jury will accept that as fact. Anything counsel will develop from that will have to be done separate and apart from it.

BY MR. FEFFER:

Q Did you ever receive an annual report on Richard Packing Company?

A No.

Q Did you ever receive any type of balance sheets or financial information?

A Not that I recall.

Q Did you have occasion to speak with Mr. Cohen on the subject?

A Oh, yes.

Q Can you tell me, to the best of your recollection, when the first such conversation took place?

MR. ROBSON: Subject to connection, your Honor?

THE COURT: Yes, as to Mr. Deutsch and Mr. Duboff.

A I think in late '69, something like that.

Q Was this a telephone conversation?

A Yes.

Q I will ask you to speak a little louder, please.

A I recall in late 1969, sometime, I called Mr. Cohen asking for financial information.

Q What did you say to Mr. Cohen during that conversation --

A I don't recall specifically, but, in general, the nature of the investment stems from the financial information I get, and since I didn't have any, I called to get some.

Q What did Mr. Cohen say to you when you requested financial information?

A That it would be forthcoming in the future.

Q How many times thereafter did you speak to Mr. Cohen on the same subject?

A I think two or three times.

Q Were the conversations generally the same, in substance?

A Yes. There appeared to me to be some undue delay in getting this information that was normally routine.

MR. BLOCK: Objection.

THE COURT: Yes, strike that. You asked Mr.

Cohen for financial information and he said, in essence, that it would be forthcoming.

THE WITNESS: Yes.

Q Did you receive other information, such as correspondence from Mr. Cohen?

A Oh, yes.

Q I show you what has been marked as Government's Exhibit 4 for identification and ask you to look at it and to identify that, if you can.

A Yes, this is a letter I received from Mr. Cohen.

Q Dated March 17, 1970?

A Yes.

MR. FEFFER: The Government offers 4.

THE COURT: What is the date?

MR. FEFFER: March 17, 1970.

(Pause.)

MR. BLOCK: Your Honor, I am trying to save a little time by conferring with Mr. Feffer.

THE COURT: You may do so.

(Pause.)

MR. BLOCK: May I ask a question on voir dire, your Honor?

THE COURT: You may.

VOIR DIRE EXAMINATION

Q Now, Mr. O'Meara, regardless of whether you can identify a particular Wall Street Journal article as being the one that you referred to, you were struck in connection with considering an investment by Value Line in Richard Packing with the market for drive-in franchise stocks, as of the time, isn't that correct?

A Yes.

Q This had been discussed in financial publications generally, isn't that so?

A Yes. That --

Q If you would just answer my questions.

Wasn't it considered, in the parlance of the Street, Wall Street, as being a hot industry at the time?

A Yes. That is just what I was going to say.

Q All right. I should have let you finish your answer.

A You would have saved yourself a question.

Q So, as your letter said, you have uncovered a franchise company which is just beginning and is making an auspicious start, right?

A Yes.

Q You ended up making a recommendation to Mr. Bernhard pursuant to this particular memorandum, that it should be bought?

A Yes.

Q The stock should be bought, isn't that right?

A Yes.

Q In making your recommendation, you had been impressed, had you not, with Milton Cohen, individually?

A Yes.

Q Had he impressed you as being a high-class gentleman?

A Yes.

Q Hard worker?

A Yes.

Q A man who knew his subject?

A Yes.

Q And, additionally, you had met Mr. Cohen for the first time at Status Marketing? That was the first time you met nim?

A Yes.

Q At the same time, you met Mr. Ward, isn't that right?

A Yes.

Q Weren't you impressed with Mr. Ward?

A Yes.

Q You knew that he had come from Diner's Club, is that right? Do you recall that?

A I don't recall it, but I knew it was some other franchise organization -- some other organization of that kind.

Q Weren't you impressed with him?

A Yes.

Q Weren't you also impressed with Mr. Deutsch as a registered representative of a pretigious Wall Street house, such as Jaffee & Company?

A Yes.

Q So all of these impressions of yours, these subjective impressions, entered into your recommendation, isn't that correct?

A Yes.

Q You say in the last paragraph on the first page: "The field promises rapid growth for Richard Packing as virtually all of its competitors in franchising have experienced and continue to do so."

A Yes.

Q In other words, as of that time, the franchise business was booming?

A Yes.

Q And didn't you figure, or take into consideration in making this recommendation, that if you had a well-managed company in the franchising business, with honest

people, that it should do well?

A Yes.

Q Now, this says "A brochure picturing the company units is enclosed." You were shown 11A, B and C.

A Yes.

Q Can you tell us now specifically which of these papers was enclosed with your report?

A Which of these? None of these. I wouldn't enclose these with a report like this. These were retained in my own file.

Q What brochure did you enclose? Do you remember what it said?

A I don't recall a brochure at all being enclosed.

Q Well, it says so, doesn't it?

A Yes. Normally I wouldn't do that, but apparently I did this time.

Q Just so there is no mistake about it, follow me, please, the second sentence of the last paragraph on the first page of Exhibit 2 says:

"A brochure picturing the company units is enclosed."

A It must have been this one, then (indicating).

Q And that is Exhibit 11C?

A Yes.

MR. BLOCK: Just so the jury knows what we are talking about, I would just like to display it, if I may.

THE COURT: You may.

(Pause.)

Q Now, then, continuing with that paragraph, you say, "Based on projected plans for 1969, the company expects to earn $3 a share this year and to double that figure in 1970."

Now, you wrote this on February 5, 1969. As ofthis time, you had not seen any financial -- withdrawn -- as of this time you had not seen any balance sheet or profit and loss statement, had you?

A Right.

Q You did not ask for any financial information such as a balance sheet and profit and loss statement, did you?

A Did you say I had not a ed forit?

Q Yes.

A Oh, yes, I did. I'm sure.

Q As of that time?

A Yes.

Q As of that time, you had?

A Yes. But at this point, since it was a

beginning company, there was none. I asked for whatever was available, but there wouldn't be anything useful. The company was just beginning.

Q In other words, you would be inclined to say that the financial report as of June 30, 1968, would not have been of any value to you?

A No. That was of a meat packing company. Here we are talking about a fast-food franchising company.

Q So what you're saying is that as of February of 1969 you knew that the franchise business was really just a gleam in their eyes at that point?

A Yes. I think the phrase used in Wall Street during the time was that it was a concept company.

Q And the concept referred to the circus wagon idea?

A Well, the fast-food franchising concept, a company engaged in multiplying its assets by being able to use the money of franchisees endlessly.

Q So that really as of the time you were writing all they had was a concept?

A Well, at the time I wrote this, no, I had quite a bit of information from Mr. Cohen and Mr. Deutsch about their plans. That's where I based my --

Q And --